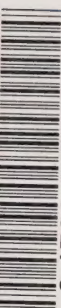


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Ontario : Legal consequences arising from labor disputes

Hearings

v. 22

April 1967



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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

563

HEARINGS HELD AT
TORONTO

VOL. NO.

22

DATE

April 17, 1957

Official Reporters

NETHERCUT & YOUNG LIMITED
48 YORK STREET
TORONTO 1, ONTARIO
TELEPHONE 363-3111

IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch.323

- and -

IN THE MATTER OF an Inquiry
Into Labour Disputes

BEFORE: The Honourable Ivan
C. Rand, Commissioner,
at 123 Edward Street,
Toronto, Ontario, on
Monday, April 17th,
1967.

E. Marshall Pollock Counsel to the Commission

APPEARANCE:

Canadian Manufacturers Association

D.S. Keen

R.V. Hicks, QC.

B.H. Stewart

H.J. Clawson

J.W. Henley

E.J. Gaunt

L.F. Wills

R.J. Woxman

Nethercut & Young Limited, Official Reporters, 48 York
Street, Toronto, Ontario. Per: T.F. Conlin, sworn.

Toronto, Ontario,
Monday, April 17, 1967.

---At 10:00 a.m. the Hearing commenced.

MR. POLLOCK: The Canadian Manufacturers Association, D.S. Keen, Manager, and I see Mr. Hicks, Mr. Stewart, Mr. Clawson, Mr. Henley, Mr. Gaunt, Mr. Wills and last but not least Mr. Woxman. Now Gentlemen who is going to be the chief spokesman for this group or will it be you Mr. Hicks?

MR. HICKS: I think it was Mr. Woxman's intention to introduce this matter Mr. Pollock.

MR. WOXMAN: Mr. Commission, my name is Woxman, I am President of Kelvinator of Canada. It was my responsibility and privilege of the Ontario Division of the Canadian Manufacturers Association to sign the brief presented to you some months ago. While I took part in the presentation of the views that were expressed to you in that document, I would like to introduce to you the spokesman and various individuals who have worked very diligently throughout these many months in preparation of the brief. I think you are quite familiar with them and repetition at this time, however, I would like to identify them by their company association. Mr. Wills to my immediate right is President of Honeywell Controls Limited, and is First Vice-Chairman of the Ontario Division of the CMA. Mr. Clawson over to the far side is Vice-President of Personnel, Steel Company of Canada Limited, and he is the Past Chairman of the CMA Industrial Relations Committee. Mr. E.J. Gaunt is the Director of Labour

1 Relations, British American Oil Company Limited and is
2 also Chairman of the CMA Ontario Division of the Labour
3 Relations Committee. Mr. J.W. Henley is Vice-President
4 of Canadian Westinghouse Limited, and is also the
5 immediate Past Chairman of the CMA Ontario Division of
6 the Labour Relations Committee. At this time we would
7 also like to determine and introduce our associates as
8 counsel and our chief spokesman for this particular
9 submission, Mr. R.V. Hicks, QC, and his associate Mr.
10 Stewart. Now elsewhere in the room today Sir in order
11 that we may provide you with as much range of questions
12 and answers that you may determine in this particular
13 sphere we have with us, and with your kind permission
14 we would like to introduce Mr. J.C. Whitelaw, QC, who
15 is the Executive Vice-President and General Manager of
16 the Canadian Manufacturers Association. We also as
17 you know have Mr. D.S. Keen, our Manager of the Ontario
18 Division of CMA. The Ontario Division of the Canadian
19 Manufacturers Association attaches great importance to
20 your inquiry. May I say how much we appreciate the
21 co-operation that has been extended to us in arranging
22 for this particular appearance today and to all and
23 with your permission at this time I would like to turn
24 this meeting over to the head of our committee in this
25 regard Mr. Wills and his group of spokesmen. Thank
26 you very much Sir.

27 MR. WILLS: Mr. Rand it is our under-
28 standing that you do not wish us to read our brief into
29 the record since we filed it with you some time ago.

30 MR. RAND: Well you suit yourself but

1 we have read the brief.

2 MR. WILLIS: We would like to give you
3 a short summary Sir with your permission of our
4 petition before turning to your questions. So if this
5 meets with your approval I would ask Mr. Hicks if he
6 would make a summation of our report.

7 MR. HICKS: Mr. Commissioner and Mr.
8 Pollock we have a supplementary submission in which we
9 have tried to put as succinctly as possible some of
10 the more salient features of the position being taken
11 by the Canadian Manufacturers Association, and if I may
12 read from this Mr. Commissioner and Mr. Pollock you
13 will find it brief. Before reviewing some of the
14 specific matters dealt with in the submission there
15 are some general background observations I would like
16 to make. Firstly while it has been mentioned briefly
17 in the submission we would like to emphasize that the
18 conditions prevalent in 1966 should not be regarded as
19 normal in considering the problems associated with
20 union management relations. As you will recall Sir
21 and Mr. Pollock we have a two year settlement for the
22 first time and arranged 30%, 20% the first year and 10%
23 the second which heretofore have been unheard of. The
24 settlements unquestionably set off a violent chain
25 reaction, etc. If I may refer you to the recent annual
26 report for the department and dated March 31, 1966, and
27 it is for the year ending March 31 last year and as you
28 know these usually come out about a year later. In
29 turning to page 7 of that report and it has just been
30 issued within the last three or four weeks and you

1 probably have copies. In any event turing to page 7
2 Smaller Bargaining Units continue to predominate, and
3 they are talking here about the certification of bar-
4 gaining briefs. More than half of the applications
5 granted involve units of fifteen or fewer employees.
6 Some of these would be craft units within the establish-
7 ment involving a great number more, but if you care to
8 look to the Board's Monthly Report you will find that
9 there has been in the last year and a half to two years
10 an increasing number of small employee units involving
11 anywhere from a dozen, fifteen, twenty, twenty-five or
12 fifty, so that I think this statement of the Board in
13 its report can be taken almost literally as meaning
14 ordinarily they are talking of small or relatively
15 small employers.

16 MR. POLLOCK: Is that figure on your
17 experience representative of the last few years?

18 MR. HICKS: Increasingly so the last
19 couple of years Mr. Pollock, recognizing of course that
20 your larger industrial establishments by and large were
21 organized many years ago and now organization is
22 reaching into smaller units.

23 THE COMMISSIONER: I suppose that is
24 being done by existing unions?

25 MR. HICKS: Yes sir. Vizualize if
26 you will the position of the average employer having a
27 unit of anywhere from a dozen to two hundred employees
28 when confronted with a gamut of union activities
29 ranging from aggressive if not militant organizational
30 drives certification proceedings which are alien to

1 the open procedures normally associated with judicially
2 determined matters, restrictions on his freedom of
3 speech opposite the union without these same restric-
4 tions and the absence of an assured democratic election,
5 etc. this is back to the brief again. And indeed in
6 my experience in twenty-five years in business this has
7 yet to take place.

8 MR. POLLOCK: Can I ask you if going
9 out of business means that no international unit has
10 been wound up or you don't make the statement on the
11 basis that locals

12 MR. HICKS: Well the odd local, it
13 isn't due, necessarily due to insolvency.

14 MR. POLLOCK: Well to insure as far
15 as the locals in the plant are concerned they go out
16 of business when somebody else gains the certification
17 rights as well or they are decertified.

18 MR. HICKS: Or they are decertified
19 that is quite right. "Then if the Union is certified

20 he must be prepared to absorb all of
21 the pressures attendant upon union
22 contract demands, negotiations, con-
23 ciliation and the threat of strike.

24 " As an independent entrepreneur,
25 the small employer may have all of his
26 capital invested in the business. He
27 normally has funded or bank indebted-
28 ness to meet, not to mention the
29 normal demands of the competitive
30 market place which command his optimum

1 performance. All of a sudden, he is
2 confronted with outsiders in the person
3 of professional union organizers, NONE
4 of whom is known to him personally;
5 usually NONE of whom is known personally
6 by most of his employees. Yet these
7 strangers effectively influence, in a
8 large measure the destiny of the enter-
9 prise, as well as his employees.

10 " In this perspective, the synthetic
11 and artificial nature of the collective
12 bargaining process becomes apparent:
13 the expectation that total strangers,
14 and I must emphasize, total strangers
15 can be expected, to quote from the
16 Statute, to bargain in good faith and
17 make every reasonable effort to con-
18 clude an agreement.

19 " To appreciate the average
20 employer's dilemma more fully, one must
21 put himself in his place when the
22 Union's demands are received and bar-
23 gaining takes place. The demands
24 invariably cover every conceivable
25 economic area applicable to employee
26 compensation - such as job evaluation,
27 life insurance, weekly indemnity,
28 hospitalization, medical insurance,
29 pensions, vacations, separation pay,
30 unemployment benefits etc. Additionally,

1 the Union's demands directly or in-
2 directly encroach upon the employer's
3 normal managerial functions and, from
4 his point of view, represent restric-
5 tions upon his ability to operate
6 efficiently.

7 " When he sits down at the bargain-
8 ing table, the strangers with whom he
9 bargains not only comprise the normal
10 bargaining representatives delegated
11 by the International office of the
12 Union but may also include an array of
13 specialists covering such typical and
14 sensitive areas as job evaluation,
15 apprentice training programmes, lay-off
16 assistance programmes and pensions. The
17 Commissioner will understand that the
18 expertise represented by these
19 specialists cannot be found within
20 most employers' organizations, regard-
21 less of size, but must be retained
22 from outside sources to enable the
23 employer to bargain effectively. With
24 the smaller employers the problem is
25 compounded, however, because the bar-
26 gaining costs represented by retention
27 of consultants are of greater
28 consequence, although, of course, they
29 are never credited to the cost of the
30 package settlement. In other words,

1 the Union is supported by experienced
2 staff experts who are regularly
3 involved in the research and negotia-
4 tion of these technical matters,
5 whereas Management must retain expert
6 assistance at additional expense to
7 the business.

8 " As to the implications of strike
9 action, it must be borne in mind that
10 it's virtually unknown for a trade
11 union to become insolvent or go out of
12 business, yet this is the risk the
13 average employer faces whenever he
14 negotiates with a Union. Loss of
15 market, customers and personnel, and
16 continuing overhead and financing
17 charges, will be the minimum price he
18 will pay if he is fortunate.

19 " It is these kinds of conditions
20 together with the disproportionate
21 risks experienced particularly by small
22 to medium sized employers that con-
23 tribute so substantially to the exist-
24 ing imbalance and disparity in bar-
25 gaining. The fact that an employer
26 who is fully responsible at law is
27 compelled to negotiate with a quasi-
28 legal entity enjoying immunity at law,
29 serves to epitomize the inequality,
30 indeed inequity, of the present legis-

1 lative standards.

2 " At this juncture we feel it is
3 pertinent to keep the record straight by
4 pointing out that the genesis of your
5 inquiry is to be found - fundamentally -
6 in the flouting of the rule of law by a
7 minority - a minority which enjoys
8 unique privileges which have never been
9 accorded any other segment of our
10 society; and a minority whose very
11 status and growth is directly
12 attributable to the legal tenets which
13 they now hold in such scorn. Their
14 purpose can only be construed as an
15 attempt to acquire yet still greater
16 privilege which, I submit, their own
17 misconduct must decry.

18 " We strongly contend that any con-
19 cession to their demands will serve to
20 increase even more severely the present
21 inequitable imbalance, particularly
22 with respect to the average employer
23 whose very survival as we emphasize is
24 dependent upon his ability to resist a
25 strike.

26 " To amplify, unions are contending
27 that in their exclusive wisdom they
28 should not only determine when an
29 employer's offer of settlement is un-
30 satisfactory, but also be legally

1 empowered to close down his operations -
2 lock, stock and barrel - for whatever
3 reason and for whatever period of time
4 they may unilaterally decide. They thus
5 seek to impose unilateral risk in a
6 strike on the employer and thereby
7 guarantee unto themselves no risk in
8 having a strike due to the employer
9 being able to attract labour in the
10 competitive labour market, irrespective
11 of its merits or the wishes of his
12 employees. The very enormity of such a
13 proposition discredits its validity.
14 Even the state does not enjoy such
15 arbitrary powers.

16 " Let us emphasize that whatever
17 alternative may be evolved to the
18 present limited bases upon which
19 employers may attempt to operate while
20 facing the economic sanctions associated
21 with a strike, it must almost inevitably
22 represent a greater concentration of
23 power in unions, which as our Brief
24 shows, have demonstrably failed to
25 respond responsibly to the power they
26 now enjoy.

27 " One of the alternatives which has
28 been discussed during the deliberations
29 of the Commission involves the pro-
30 position that neutralization of the

1 picket line and the violence and abuse
2 which are sometimes associated with it
3 may be accomplished by prohibiting the
4 employment of replacements for those
5 on strike and prohibiting alternative
6 employment by strikers.

7 " The Association respectfully sub-
8 mits that such a proposition fails to
9 equate the relative differences which
10 would still prevail between the dis-
11 putants, largely because it would be
12 impractical of enforcement against the
13 Union and the strikers. These differ-
14 ences can be characterized by the
15 mobility of labour on one hand, as
16 contrasted with the relative immobility
17 of capital, on the other, during a
18 strike.

19 " Let us first examine labour's
20 mobility in this context. The picket
21 line, of course, is far from being
22 immobile. The deterrent force it
23 represents is not limited to its actual
24 location but is readily transformed
25 into individual harrassment of non-
26 strikers by such typical techniques as
27 canvassing employees at their homes,
28 telephone abuse, all hours of the day
29 and night, the pursuit of employees in
30 their cars and the harrassment of their

1 families.

2 " The physical dissolution of a
3 picket line will not, therefore,
4 neutralize either its purpose or
5 influence but will simply drive it
6 underground by converting it into other
7 equally coercive techniques.

8 " The trade union's superior
9 mobility is also enhanced by the fact
10 that although it represents the
11 employees as a collective entity, they
12 respectively enjoy personal mobility.
13 Consequently, their dispersion through-
14 out the industrial community, particu-
15 larly the larger metropolitan areas,
16 precludes enforcement of a "moonlight-
17 ing" ban on strikers. Indeed, it is
18 difficult to conceive of a law which
19 could effectively restrain a person
20 indefinitely from taking alternative
21 employment. Movement to another
22 community, even to another jurisdiction,
23 would still remain his option.

24 " Conversely, enforcement of pro-
25 hibitions against an employer engaging
26 replacements during a strike can be
27 virtually absolute because of the con-
28 centration of his facilities in identi-
29 fiable and contained locations.

30 " Additionally, the capital of the

1 enterprise as represented by its fixed
2 assets (which normally constitute the
3 bulk of its net worth), normally lacks
4 any mobility and no imagination is
5 required to realize the depreciation in
6 value which a struck and sterile plant
7 would incur should the owners attempt
8 its liquidation during strike activity.

9 " It follows that sanctions against
10 moonlighting by strikers and an employer
11 being denied replacement labour during
12 a strike are competely lacking in
13 reciprocity. Under such a formula the
14 existing power gap would be still
15 further widened to the detriment of
16 thousands of employers who are dependent
17 upon an opportunity to continue operat-
18 ing if they are to avoid either an
19 uneconomic settlement or extinction.

20 " As contended in the Association's
21 Brief, just as the Union's right to
22 strike should continue, equally should
23 an employer's right to resist a strike
24 be permitted. A continuation of these
25 conditions on any equitable basis pre-
26 supposes the full recognition of
27 labour's right to strike and to sub-
28 sidize their strike by whatever
29 legitimate means is at their disposal,
30 including acceptance of alternative

1 employment. Reciprocally, it recog-
2 nizes the right of an employer to keep
3 his business together by attempting to
4 operate - a condition of equal value to
5 those who wish the opportunity of work
6 after the strike is settled.

7 " Another overriding feature of the
8 present system is the relatively
9 objective test accorded to the respec-
10 tive positions of the parties because
11 the conditions in dispute face the most
12 critical criterion of all, namely, the
13 competitive labour market. If through
14 acceptance by employees and others the
15 proffered terms of employment stand up
16 to competition in the labour market,
17 despite the abnormalities associated
18 with the working environment during a
19 strike, justification for the strike is
20 clearly brought into issue. On the
21 other hand, the failure of an employer
22 to satisfy his labour requirements would
23 infer justification of the Union's
24 position, though not in any definitive
25 sense because of the pressures which
26 are normally bearing upon persons seek-
27 ing employment while a strike is in
28 progress. It should be observed that
29 these checks and balances are an
30 integral part of free collective

1 bargaining and are equally efficacious
2 when an injunction is necessary to
3 assure peaceful picketing, which serves
4 to assure the free play of these
5 competitive forces.

6 " Another matter which is of deep
7 concern to the Association is the
8 position the employee as an individual
9 occupies in all of these matters.
10 More often than not, employees are
11 "caught in the middle" of labour dis-
12 putes. Loyalty to their employer
13 cannot help but conflict on occasion
14 with the loyalty to the union having
15 their bargaining rights. To compound
16 the problem, the procedures pertaining
17 to certifications and negotiations
18 are beyond their ken.

19 " Our present concern is not
20 premised upon any paternalistic
21 attitude, as unions from time to time
22 are wonton to allege, but rather on a
23 recognition of the need for the
24 preservation and protection of the
25 basic rights of the great number of
26 persons comprising the work force
27 of this Province."
28
29
30

1 Sir and Mr. Pollock I think we can't overstress and
2 emphasize the concern the Association feels for the
3 relatively small employers of labour, and if I may
4 respectfully suggest in assessing the material before
5 you and in drawing your report there should be pre=
6 ponderant weight given to the corner grocery, the corner
7 machine shop, to the multitude of service industries,
8 the dry cleaning establishments, the hardware store.

9 THE COMMISSIONER: Are they going to
10 be effected by the same tendency that now has resulted
11 in these huge organized chain stores and the consolida-
12 tion of interests of that nature?

13 MR. HICKS: This is difficult to say
14 Sir. This again may be in the larger industrial areas
15 but my understanding is that in many of the locations
16 occupied by some of the smaller and particularly the
17 grocer and any retailer, they are not too economic for
18 a chain to take over and operate. There isn't the
19 same market as you will notice when they place a new
20 store they are very careful to place it in a demonstrably
21 sized market which will be economic for their train of
22 operation and it is questionable in my mind if their
23 continued expansion or particular absorption of some
24 of the small retail units will continue at the same
25 rate.

26 THE COMMISSIONER: Have you any
27 statistics on the failures of these small industries
28 or their defeat or destruction you might say by strike?

29 MR. HICKS: No sir but I think there
30 is a simple answer to that question. That is the fact

1 that they have just recently become involved in
2 collective bargaining, within a very recent period of
3 time, and normally and this is a peculiarly aspect of
4 bargaining. Ordinarily a union is very keen to
5 negotiate and settle its first agreement. Normally
6 an employer can expect concessions from a union in
7 bargaining its first agreement which are not available
8 to the employer in the renewal agreements. Now there
9 is a very good reason for it. Obviously the union
10 wishes to consolidate its position. They wish to
11 consolidate the position not only with the employees
12 but to a degree with the employer, so that almost
13 invariably we find in bargaining initial agreements
14 that this prevails almost irrespective of the size of
15 the employer. Their interest is basically to get the
16 first agreement.

17 THE COMMISSIONER: Well that may be
18 but surely there is some evidence of the history of
19 these small corner stores. Would there be any purpose
20 in striking a small store of that sort that you
21 mention? How many employees would they have?

22 MR. HICKS: Well let us put it in
23 this perspective. Let's say the community of Windsor
24 where you have both organized and unorganized retail
25 establishments and where the competitive conditions
26 and rates and benefits are not the same as between the
27 organized and unorganized. Now it can reach the
28 saturation point in an organized store obviously they
29 can't go on and on and on and render themselves more
30 and more uncompetitive opposite the employer who does

1 not have a union contract. There comes a saturation
2 point I submit where the employer has to either take a
3 position and face a strike or has to capitulate and
4 fend for himself economically.

5 THE COMMISSIONER: Well up to the
6 present time have you any evidence, now take such a
7 grocery store, that has ever been the victim of a
8 strike and if not what is the incidence of failure
9 and bankruptcy of these corner stores?

10 MR. HICKS: Well Sir again I think
11 in terms of today's conditions and we have to assess
12 it in light of today's conditions, the union
13 recognizes the individual entrepreneur still has the
14 right to operate and the proposition we are concerned
15 with is that where the union seeks to ⁱⁿ effect padlock
16 the operation.

17 THE COMMISSIONER: Why would it do
18 it to the destruction of that place of employment?

19 MR. HICKS: Sir there may be several
20 reasons, from the union's point of view completely in
21 good faith. They may decide that the conditions
22 being offered by the employer aren't competitive with
23 organized shops and they should be. They may decide
24 on a bill or pattern or basis of settlement that they
25 want to establish what will represent the pattern for
26 the industry and invariably they seek out and single
27 out one employer to achieve that purpose. Then
28 achieving that purpose they move from there on to the
29 others in the same industry.

30 THE COMMISSIONER: Well I suppose

1 they read the newspapers like all the rest of us do
2 out
3 and they find/that at least one outstanding Canadian
4 has predicted the elimination of those stores and the
5 inevitable course of economic destruction. So it
6 would be rather foolish to try to anticipate the
7 necessary demise of that store.

8 MR. HICKS: Well I have experienced
9 situations at bargaining personally where the union
10 frankly told us that we know there is an outstanding
11 indebtedness to be met at the bank and/ⁱⁿthis particular
12 case it was a half million dollars and we know that
13 the merchandise that we have already produced has to
14 be delivered by a certain date to satisfy that demand
15 from the bank, and you are going to meet our position
16 or else. We know that in seasonal industries Sir

17 THE COMMISSIONER: Well I wouldn't
18 assume for a moment that that situation cannot be dealt
19 with.

20 MR. HICKS: Well let's take the
21 packing industry sir where you have fruit packing
22 involved like tomatoes. When does the critical
23 bargaining take place there? Invariably just at the
24 beginning of the season or during the season and the
25 employer is faced not only with his own pressures
26 like the type we have been talking about, he has his
27 farmers concern and producers concern and these are
28 the kinds of pressures that come into play in bargain-
29 ing. Now I submit that if their proposition and I
30 say closing the premises and padlocking ...

THE COMMISSIONER: Not necessarily

1 at all because any prohibition of that sort wouldn't
2 be directed against any of the employees who wanted to
3 continue. It is quite true as you suggest that there
4 are means by which pressure can be brought but still
5 that is not only effective and we would confess to a
6 terrible weakness if we can't deal with it at all.
7 What the contention amounts to is this that you've got
8 to leave things as they are. Now that may be good
9 counsel and I'm not saying that it is but I think we
10 ought to know what a certain contention leads to.

11 MR. HICKS: Yes sir and frankly that
12 is our position fundamentally in the area of strikes
13 and collective bargaining. And it is partly due to
14 the relative minor incidence of strikes and what its
15 effect on the economy as we understand it and if I
16 may quote for example from the recent Newsletter of
17 the Canadian Chamber of Commerce and I will file this
18 with you and it is dated March 1967 and this is a
19 public statistic -

20 "the time lost due to work stoppages
21 during 1966 represented .33% of the
22 total estimated working time of non-
23 agricultural workers."

24 THE COMMISSIONER: But really that
25 is the same as saying that only 2% of the population
26 or 1% find themselves in the clutches of the
27 criminal law, but we have to have a criminal law
28 nevertheless.

29 MR. HICKS: That is right sir but
30 we do suggest that the radical or revolutionary

1 changes sought in some quarters are not justified in
2 terms of a need. This is our position sir.

3 THE COMMISSIONER: Well let me
4 suggest this to you that in Australia that is the
5 accepted condition and nobody gives it a thought.

6 MR. HICKS: Quite sir and I think
7 you will be the first sir after your visit to
8 Australia to recognize that there is a different
9 mores, there is a different structure and framework
10 surrounding the whole issue of bargaining which
11 doesn't prevail probably elsewhere in the world.

12 THE COMMISSIONER: That is true
13 but those are two important features and I am simply
14 trying to answer your question. These are two
15 important features from a social standpoint. You
16 take a small city or a good sized town and it is
17 intimately related and concerned with the local
18 manufacture and these isolated events take place
19 in these small cases and they become a community
20 matter. I would like to have some information on
21 this matter. In this city you have I would say
22 from what I can see a very large number of small
23 industries and they are well set up and I have no
24 doubt they do an excellent work. How many times
25 have they been the victims of a strike and how many
26 losses and bankruptcies have occurred in industry of
27 that nature in this community? That is the only way
28 we can tell what the basic support and fact is to the
29 contention that you advance.

30 MR. HICKS: In my experience there

1 have been very few, they can be said to be directly
2 or their insolvency is directly attributable to strike
3 action but I suggest sir that if they were left only
4 to engaging employees who at the time of the strike
5 at that moment decided to stay on there would be a
6 greater frequency and a greater incidence of
7 insolvencies because they couldn't compete and they
8 couldn't remain in the market. There would be no
9 opportunity for them with the limited numbers at their
10 disposal.

11 THE COMMISSIONER: Well you are
12 assuming now that any such limitation would be
13 absolute. Supposing it were discretionary?

14 MR. HICKS: In what fashion or in
15 what form sir?

16 THE COMMISSIONER: What would be
17 discretionary would be the admission of strike
18 breakers, if there was any danger of a weak employer
19 faced with a strong union. You could have the union
20 restrained and the employer freed.

21 MR. HICKS: Sir I assume there
22 would be some authority and that with this
23 discretion.

24 THE COMMISSIONER: Yes and I'm just
25 suggesting that.

26 MR. HICKS: And the authority
27 would have to examine the merits of the situation
28 and presumably they would go into the merits of the
29 offer and the unions counter position. But sir isn't
30 the natural result of that then almost in effect

1 arbitration? Isn't the authority then in principle
2 making an arbitrary decision really pertaining to the
3 merits of the respective parties?

4 THE COMMISSIONER: No you are
5 discussing the question of the balance of power
6 now this is the means of making the effective power
7 more or less equalized.

8 MR. HICKS: I follow that concept
9 sir but I suggest in reaching that decision in effect
10 the authority is making an arbitrable decision
11 relating to the merits of the strike and the
12 employer's position.

13 THE COMMISSIONER: No I think it
14 is a test of endurance. With equal power which can
15 endure longer, and that is the theory of a strike.
16 It is a battle and which one can outlast the other
17 in enduring it.

18 MR. HICKS: I am concerned that it
19 would defy the wisdom of Solomon. One to determine
20 and the multitude of situations/prevail ranging from
21 the small employer to the major employer to the
22 craft union on strike to the industrial union on
23 strike, to the teamster's union who deliver/merchan-
24 dise and pick it up/so on and all the myriad of con-
25 ditions and factors and influences that are involved
26 in such a determination, frankly I think we would
27 question if there is a Solomon in our midst who would
28 be competent to make that kind of a decision fairly
29 and judiciously, fairly and judiciously. In other
30 words it almost defies logic. Many of the strike

1 situations completely and utterly defy logic and the
2 reasons entering into them and the attitude of the
3 people

4 THE COMMISSIONER: Yes but the
5 acts which can be affected are limited and the acts
6 which cause the trouble are limited.

7 MR. POLLOCK: What you are saying
8 and do I understand your position to be that if this
9 tribunal or whatever it is is to act to equalize the
10 parties it must make some valued judgment as to which
11 of the parties ought to be helped and which hindered.

12 MR. HICKS: Exactly and it must
13 take an arbitrary position in favour of one or the
14 our view is
15 other and/we have considered this at some length
16 frankly in preparing ourselves for our presentation.
17 Our view is that it is beyond the comprehension, it
18 is beyond that kind of judgment.

19 THE COMMISSIONER: What do you
20 mean by comprehension that you can't intellectually
21 visualize it?

22 MR. HICKS: You can intellectually
23 visualize it up to a point sir but I don't think you
24 can judicially determine, based on the facts avail-
25 able to you, the rights and wrongs fully enough to
26 produce a fair judicial decision.

27 THE COMMISSIONER: Not if you make
28 the ordinary assumptions of laissez faire, I agree.
29 But I thought we had more or less got beyond that
30 and here today we are acting throughout the Dominion
under a tremendous policy of full employment in

1 which the government is more deeply involved every
2 day and in which the parties to the production satisfy
3 the desires and necessities of the public. Those
4 powers are now composed of the three parties who
5 control matters, the government, the employer, you
6 might say the manufacturer or the industrialist or
7 whatever he may be called, and the worker. So don't
8 you think really that not only the action of labour
9 but the action of employers in seeking this and that
10 and the other assistance in the way of subsidy, we
11 are subsidizing to the extent of millions in this
12 country, private enterprise. Don't you think that
13 all of these things coupled with the obligation that
14 has been imposed by legislature upon employers to
15 negotiate in good faith and the continued declaration
16 that the relation of employees does not cease by
17 virtue of a strike, don't^{you}/think that we have modified
18 our outlook and while we must preserve as a basic
19 assumption the initiative of human beings in taking
20 the risks of industry, it must be preserved. On the
21 other hand they may have to look upon themselves as
22 serving a function which they actually served which
23 is the consolidation of this society of Canada.

24 MR. HICKS: I couldn't quarrel with
25 your social principles at all and I personally concur,
26 but let us take for example in practical terms the
27 situation of an employer who is not organized and has
28 full freedom of operation and I can think of an
29 industry where there are three basic productive units
30 in the industry. Let us assume that two of them are

1 organized and the third is not organized. Now is it
2 feasible to think in terms of a tribunal determining
3 as I emphasize judiciously, terms and conditions and
4 restrictions and limitations under which the
5 organized plants may continue to operate when the
6 third employer has full freedom of operation. I am
7 trying to convey to you as best as I can the
8 practicalities of the problem and the difficulty of
9 coming down with a standard of criteria. It would
10 be an ad hoc decision in every case/^{and}as you know ad hoc
11 decisions lead invariably to inconsistencies and these
12 inconsistencies as they would apply to others not
13 involved in that instant strike where the detriment
14 would flow. This is our concern and we can't help
15 but agree with your social concept and the principles
16 you are expounding but when it comes down to the
17 practical application of them sir our concern is that
18 it would impede the competitive forces that have made
19 our country as great as it is.

20 THE COMMISSIONER: Well you know
21 it is advanced by some that in the competitive field
22 inefficiency should disappear and if you are not able
23 to live in the atmosphere it has created why you will
24 have to seek some other means of activity or invest-
25 ment. That has been adopted and there may be cases
26 in which a peak business situated in a small
27 community would be much better served by being left
28 alone because the people who are working there have
29 some means of employment and they ought to be left
30 alone. While I quite agree that that is a case that

1 makes you stop and do some thinking. But on the
2 other hand, we are on the highway now to a resolution
3 of very powerful functional control, and that the
4 individual more or less must submit to it. Take the
5 whole of North America, isn't that the inevitable
6 tendencies. And I know in one case as I mentioned
7 before and I think his judgment ought to be respected
8 at least it should be given some attention, he said
9 that it is inevitable. Now then if that is so and
10 I assume there are no statistics which will show the
11 small industries in this community have so far
12 suffered then I think that your considerations
13 advanced are so far weakened. But let me assure
14 you of this Mr. Hicks that this is the sort of thing
15 that I am seeking from you.

16 MR. HICKS: We understand completely
17 sir and I must say we welcome the opportunity of the
18 dialogue.

19 THE COMMISSIONER: Well I'm glad
20 and I hope you take full advantage of it. Because
21 this seems to me to be a sort of crucial issue.

22 MR. HICKS: Yes sir and again we
23 look at the perspective or legislation we still find
24 our trust and combines legislation, properly so,
25

26 THE COMMISSIONER: When you say
27 properly so why is it properly so?

28 MR. HICKS: To provide the
29 competition necessary.

30 THE COMMISSIONER: But what has it

1 led to? What was the condition that exacted that
2 legislation?

3 MR. HICKS: Employers combining
4 together to the detriment of the community.

5 THE COMMISSIONER: What is the
6 force or pressure behind that? Is it any different
7 from the combination of labour? It is in seeking to
8 serve a personal interest. I don't criticize that
9 in the least.

10 MR. HICKS: Probably not in
11 principle but in labour and union organizations
12 you are dealing in part with a politically motivated
13 entity and they are not subject to the same kind of
14 control as your combines. They are not as amenable
15 or not as reachable and not as available to the court
16 for control and here again is a very nebulous area
17 that concerns us.

18 THE COMMISSIONER: Well for seven
19 hundred years we have been facing the tendency between
20 high prices from the purchaser and the resort to
21 measures that are prevalent seven hundred years ago.
22 You know those and the rules of law that were adduced.
23 And here today if I may suggest it we have got to
24 consider the cohesion of our society. Look at what
25 is facing the United States today as a social or
26 really presenting a horrible aspect. Anybody can see
27 it. Now we must remember that in our democracy
28 which everybody protests is what we demand, we have
29 mass and we have leadership. Mass in the true sense
30 must be cohesive and recognized within itself. You

1 cannot have a mass rent by hostility between each
2 other.

3 MR. HICKS: Our conception though
4 that is this in balance be satisfied or can it be
5 satisfied by constituting the other force as an
6 entity at law. That is the premise of our position.

7 THE COMMISSIONER: Yes I subscribe
8 to that.

9 MR. HICKS: Secondly I suggest with
10 are sanctions that /more practicable an application and
11 are greater substance in form.

12 THE COMMISSIONER: What sanctions
13 do you think would be practicable?

14 MR. HICKS: We have mentioned in
15 our submission sir the problems associated with the
16 present sanctions that is the enforcement of the
17 present sanctions. We have ⁱⁿ/effect three alternative
18 remedies now in the event of breach of contract and
19 two in the event of breach of statute of the labour
20 relations act. The latter of course we have the
21 right to apply to the board or either party for
22 declaration that the striker or walkout is unlawful.
23 And as we explained in our submission if at the time
24 of the hearing is to take place the stoppage is dis-
25 continued then the board in the absence of the applica-
26 tion being withdrawn dismisses the application. Our
27 view is that this is misunderstood and it is an abuse
28 of the normal principles of law and requires
29 correction. The second alternative is that pertain-
30 ing to a prosecution and we say represents

1 unnecessary delay and expense by having a power of
2 veto vested in any authority. It happens now to be
3 vested in the labour relations board. Our submission
4 is that if there is a violation of the law whatever
5 form it may take the court should be readily available
6 to hear it.

7 THE COMMISSIONER: Well who would
8 initiate the action?

9 MR. HICKS: I think in terms of the
10 violation of the collective agreement it is a matter
11 for the parties.

12 THE COMMISSIONER: But do they do it?

13 MR. HICKS: They are doing it more
14 and more sir and as I say there is a frustration when
15 you come to proceed and you find

16
17 THE COMMISSIONER: They have a veto?

18 MR. HICKS: Exactly sir and we say
19 that penalty should be reexamined and we feel that
20 firstly if the union is constituted as a suitable
21 entity this will impose restraint just as there is
22 restraint now on employers. Secondly we feel that
23 the penalties prescribed under the act are not
24 adequate and they should be not or the procedure
25 should not only be simplified but the penalty should
26 be increased. If I may sir I'm not proposing this
27 but I draw it to your attention sir. New York State
28 has just revised its law banning public worker
29 strikes and to summarize they provide a fine of
30 \$10,000 or one week's dues and it is a very interesting

1 formula, or one week's dues whichever is the less
2 against any public employee union for every day its
3 members stay on strike. This is in New York State
4 sir. The penalty depriving the union of its dues
5 check off for a maximum of eighteen months after the
6 strike a flexible system of nonmandatory penalties
7 against individual strikers. In some respects it
8 harks back to your famous formula sir but our view is
9 that the present penalties are not substantial enough
10 to discourage and restrain

11 THE COMMISSIONER: Well those would
12 seem to me that they should be very effective and I
13 agree with you that you can't ^{have} enforcement only on one
14 side.

15 MR. HICKS: That is right sir and
16 again if I may allude to the Australian situation as
17 I understand there is a fine of \$1,000 there
18 for each day of offence the same as in Ontario.

19 THE COMMISSIONER: But the feeling
20 so far has been that the employee won't proceed to
21 apply ^{for} / leave to prosecute. Now what would you say
22 to having an independent public officer whose duty
23 would be to use his own judgment to prosecute where
24 he felt that there should be a prosecution?

25 MR. HICKS: I would have to defer
26 here to my confrere sir.

27 THE COMMISSIONER: I think what is
28 generally said is that the employer has to live with
29 his men and he doesn't want to inject poison into their
30 relations unnecessarily.

1 MR. HICKS: Could we say sir that
2 perhaps there should be an alternative position avail-
3 able that initially the aggrieved party should have the
4 opportunity of taking action and failing that then the
5 public officer by authority

6 THE COMMISSIONER: Well that is a
7 suggestion.

8 MR. CLAWSON: Well one of the
9 reasons that you said it Mr. Commissioner for failure
10 in some cases of the employer to take action mainly
11 based on the fact that he has to live with his
12 employee, that really isn't the case. We are asking
13 that we have the right to proceed against the union
14 for damages. That is the union as an entity but not
15 the individual employees. So this deterrent would
16 not be there if we could proceed against the union
17 and

18 THE COMMISSIONER: Well let us
19 assume that the union has become a suable entity and
20 liable just as an individual. What do you say to that?

21 MR. CLAWSON: I think it would
22 effectively result in a reduction of wildcat strikes.

23 THE COMMISSIONER: Of course the next
24 question is would you assume that it would have to be
25 brought home to some officer?

26 MR. HICKS: Of the union?

27 THE COMMISSIONER: Yes of the union
28 responsible.

29 MR. HICKS: Yes this may be the case
30 sir.

1 MR. POLLOCK: Has that been the
2 experience in British Columbia?

3 MR. HICKS: Frankly we are not very
4 conversant with the situation in British Columbia and
5 we can't speak intelligently about it Mr. Pollock.

6 MR. POLLOCK: I can say that since
7 1959 and of course unions have^{as}/a common law doctrine
8 been sued for a longer period than that but since 1959
9 when it was incorporated in the trade unions act there
10 has only been one action proceeded with and that was a
11 case where the principal having delivered these people
12 really no longer existed. There was a construction
13 project on a bridge and it had been completed and they
14 recovered some \$40,000 but the argument against this
15 suability there was largely based on the question of
16 we would rather have the prevention of the injunction
17 and any action against the people; not on

18 MR. HICKS: Well we ^{would}/view them as
19 alternative remedies or joint remedies in that point
20 of view. You see making them suable one would expect
21 it would result in greater constraint apart from
22 whatever action an employer might take, at least there
23 would be the possibility of action.

24 MR. POLLOCK: Well you would have
25 to make them absolutely vicarious liable or would you
26 adopt the technique enunciated in the Polymer case
27 because if you do that then all it does is increase
28 the number of wildcat activities. People say please
29 don't go on strike and stick with the collective
30 agreement and don't do any of these terrible things

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1 openly, and I'm not suggesting that they would go then
2 and say go ahead and do it but the tongue in cheek
3 avenue is open to them.

4 MR. HICKS: I think you know that
5 the B.C. legislation puts the onus on the union.

6 THE COMMISSIONER: You can do it by
7 onus or you could say that you are liable in any event
8 unless you exculpate yourself or you have recourse
9 against the individual. All of those are possibilities.

10 MR. HICKS: Yes sir. Now sir we
11 would like to explain the reference to our formal
12 brief and go to Chapter 6 dealing with the United
13 States. At the time we drew this which was last
14 summer we did not know that you would have the
15 advantage of Professor Erin's report but having
16 prepared the material basically for our own informa-
17 tion and assistance we felt for what it is worth we
18 should make it available to you despite the fact you
19 have the report of Professor Erin.

20 MR. POLLOCK: It doesn't agree on
21 all points.

22 MR. HICKS: No but there is a parallel
23 between them throughout substantially.

24 THE COMMISSIONER: Have you a copy
25 of it, I haven't seen it.

26 MR. STEWART: I will be glad to get
27 you a copy of it sir.

28 THE COMMISSIONER: We have it
29 apparently in a volume. We have quite a few things
30 to read up.

1 MR. HICKS: I'm sure you have and
2 we don't envy you sir. As to the United Kingdom in
3 Chapter 7 on page 48 again we felt it might be of
4 comparable interest to deal with it very briefly as
5 we have particularly in the area of injunctions where
6 as you know the right to injunctions still prevails.

7 MR. POLLOCK: Much to some peoples
8 surprise after so many years of action.

9 MR. HICKS: Yes. There are some
10 observations we would like to make concerning the
11 submission of the Ontario Federation of Labour.
12 Naturally most of our material has anticipated their
13 representation so that I needn't deal with the points
14 where we have already dealt with their proposals.
15 But if I may refer you to a few pages.

16 THE COMMISSIONER: This is the
17 Ontario Federation of Labour?

18 MR. HICKS: Yes sir.

19 MR. POLLOCK: They have come out I
20 guess in competition to you in a slicker form than
21 originally.

22 MR. HICKS: Well we haven't had the
23 benefit by copy but on page 2 for example the penulti-
24 mate paragraph they make the statement - most of the
25 legislation and its administration puts unnecessary
26 obstacles in the way of free collective bargaining.
27 Now frankly as we understand the present legislation
28 it was designed to facilitate collective bargaining.
29 It provided for the first time the right to certifica-
30 tion, the right to compulsory negotiation, the right

1 to strike.

2 THE COMMISSIONER: I gather that
3 what was really behind that was from the beginning they
4 wanted the striking power to be present.

5 MR. HICKS: Presumably but frankly
6 we don't understand why a vehicle which is designed to
7 advance and enhance their interests and has done so,
8 can be construed as a matter of an obstacle or in terms
9 of an obstacle. On pages 4 and 5 the last paragraph
10 in this case and continued onto page 5 to read -

11 "However to streamline the procedure
12 we would favour a system of voluntary
13 conciliation based on the consent of
14 both parties. In addition we would
15 suggest that conciliation be granted
16 sixty days before expiry of contract
17 and that either party be free to take
18 economic action on the expiry of the
19 contract unless the time is extended
20 by mutual consent."

21 Then they synopsise their position in this fashion at
22 the end of page 5 -

23 "This combination of negotiations and
24 course when left to itself has been
25 the most productive in solving labour
26 disputes."

27 Now our concern is that their emphasis here on force
28 rather typifies their position before you.

29 THE COMMISSIONER: What do you think
30 they mean by force?

1 MR. HICKS: Strike action or whatever
2 economic sanctions may be brought to bear to force an
3 agreement.

4 MR. POLLOCK: Aren't they really
5 saying that the effective collective bargaining takes
6 place in the eleventh hour when both parties know that
7 there is not going to be a tomorrow that tomorrow it
8 is going to be strike or settlement. Isn't that
9 really what they are saying?

10 MR. HICKS: Presumably, but Mr.
11 Pollock in reaching that point they are also saying
12 that irrespective of the nature of their demands, how
13 good they are or how reasonable they are, there has to
14 be an arbitrary dead line and frankly I don't know if
15 there has been filed with you/^{the}copies of kinds of
16 demands made on industry and we could furnish you with
17 dozens but I thought it would be interesting to you if
18 I may file this set which illustrates the kinds of
19 demands which prevail and particularly some of its
20 constitute unions expect to be negotiated to finality
21 within a period of sixty days. These happen to be
22 UAW and Ford and I deliberately and frankly used UAW
23 because it has been one of the strongest advocates of
24 this proposition. This is a proposition which has
25 been used in the States for some years where the law
26 condones it if I may put it that way sir, and they
27 have said here with their major contractors, major
28 employers particularly the Big 3 in the automotive
29 industry, they have said no contract in effect no work.

30 MR. POLLOCK: But that is limited to

1 the major employers.

2 MR. HICKS: Yes and where it is just
3 as impracticable I submit in the face of these
4 horrendous demands to anticipate that you can con-
5 ceivably and rationally come to a conclusion on any
6 reasonable basis within a prescribed arbitrary dead
7 line. We say that this is not feasible and it is not
8 practical and we say it is just the use of a big stick
9 and we say it is another facet or aspect of force and
10 with which you Mr. Commissioner are concerned with
11 reducing rather than increasing.

12 MR. POLLOCK: Of course their
13 position Mr. Hicks and let me understand you, as I
14 understand their position they say that we can extend
15 the period by voluntary agreement so that when they
16 are in that position if there is negotiation in good
17 faith, whatever that means, on both parties they can
18 extend this period of time but when there is a condi-
19 tion of delay that is tactical delay. Now the auto-
20 mobile industry is a perfect example. There are
21 times

22 MR. HICKS: I didn't intend to make
23 them a guinea pig by the way Mr. Pollock.

24 MR. POLLOCK: Well I'll take the
25 mining industry if you prefer. There are times when
26 there is high production and times of the year when
27 there is /low production. There is a time of year when the
28 work force is critically needed and there is a time
29 when the work force is laid off. Now it is to the
30 advantage of the employer to have the strike when

1 he is laying off people and it is to the advantage of
2 the union to have the strike when the employer needs
3 these people, so that they are both a bargaining power
4 and seek to have the strike at a time when it is most
5 beneficial to them and a disadvantage to the other,
6 which is understandable. Now the union says if we
7 knew exactly what time we could call a strike then all
8 this flexibility and all this technical bargaining
9 would go out the window. Then it would really be a
10 question then of a new negotiating item, what is the
11 expiry date of a contract because you can predict in
12 the future when your automobile companies are going
13 to need to lay off people.

14 MR. HICKS: Well what in effect they
15 are saying is that within their peculiar and individual
16 bias they decide whether or not they are bargaining in
17 good faith and I don't feel that should be any
18 unilateral decision within a bias. Secondly they are
19 as to the terms of the agreement, it is traditional
20 now in the industry you mention particularly, that
21 the agreement term or expiry date still covers and
22 the matter, they don't lose term and that contract is
23 almost invariably made retroactive and the matter of
24 any wage or other economic adjustments becomes a
25 matter of negotiation, and I must admit that in the
26 great majority now of negotiations those are also
27 fully retroactive so that in terms of the employee
28 and again we must look to the effective impact of
29 these situations on our employees, the terms of the
30 employees, their position is unimpaired because

1 without a strike even though the contract may not be
2 settled for two or three months after its normal
3 expiry date, ordinarily in the vast majority of cases
4 there is a retroactive application of the agreement.

5 THE COMMISSIONER: Would you say it
6 was effective in the majority of cases?

7 MR. HICKS: I would say it was
8 effective in the majority of cases yes. In the oil
9 industry, in the petro chemical industry, in the
10 steel industry and in the automotive industry it is
11 retroactive.

12 MR. CLAWSON: We don't agree in
13 advance but in effect this is retroactive.

14 MR. HICKS: And this^{has}/happened over
15 a period of many, many years so that the employee
16 interests are thereby protected because there is still
17 an area of negotiation as to the economic application.
18 To leave it to the party that depends on whose ox is
19 being gored^{and}/we don't think that is fair Mr. Pollock
20 we think there should be procedures which are
21 designed and which are originally intended to allow
22 of a reasonable approach to bargaining with reasonable
23 time limits in which to achieve a settlement and fail-
24 ing which then mediation commences. Now in the
25 mediation area, and you are going to hear I under-
26 stand on Wednesday about delays inherent in^{the}/mediation
27 process, conciliation process.

28 THE COMMISSIONER: Well suppose you
29 extended the time two or three months after the
30 expiration of the contract?

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1 MR. HICKS: That is in effect what
2 prevails now sir.

3 MR. POLLOCK: Well there is no time
4 it is all flexible.

5 MR. HICKS: That is right it is
6 completely flexible. Now let us examine, most
7 contracts provide for sixty day opening and some ninety.
8 Now you can imagine to make it any farther particularly
9 when you have a one year agreement and there are a
10 great many one year agreements still around the
11 country, most initial agreements are for terms of one
12 year.

13 THE COMMISSIONER: What about
14 renewals?

15 MR. HICKS: Renewals are averaging
16 two and three but there are still several renewals on
17 the one year basis Mr. Commissioner. So that to
18 advance it beyond ninety days means that you have no
19 contract in effect at all.

20 MR. POLLOCK: In some cases you
21 haven't a contract anyway; if the thing is retroactive
22 to the initial stage of bargaining you have ten months
23 to negotiate.

24 THE COMMISSIONER: But the general
25 of conditions / employment are preserved during
26 negotiations.

27 MR. HICKS: Provided throughout the
28 period the status quo applies to the management and
29 employee. So the contract is open on the sixtieth
30 day and there are sixty days in which to attempt to

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1 reconcile the matter and any time during that period
2 practically any time it is now the practice of the
3 department as I construe it and I am experiencing it,
4 as long as there have been one or two meetings and in
5 fact on occasion there has only been one meeting where
6 the parties have tabled their proposals and counter-
7 proposals. Virtually without exception in those
8 circumstances it is my understanding it is their
9 current practice that an officer is appointed. Now
10 the officer can't be made available the next day or
11 the day after tomorrow but in fairness to the depart-
12 ment normally you get an officer within two weeks.
13 He comes into play and he does what he can and again
14 ^{are} they/attempting and making more assiduous efforts at
15 the officer forcing, or not forcing, but to bring
16 greater pressure on the situation and spending more
17 time on the problem to effect a settlement. Failing
18 that we come into the ministerial discretion of a
19 board or no board. Now here again the AF of L/^{is}saying
20 to you "no board."

21 THE COMMISSIONER: What is your
22 view?

23 MR. HICKS: Our view is a realistic
24 one. It leaves for determination by a neutral, by
25 an impartial referee if you will, whether or not a
26 board is needed and will serve the purpose. And we
27 submit very earnestly that with that discretion
28 neither parties' interest can be that much seriously
29 impaired or prejudiced and our view is that that
30 should continue. Now we have heard a lot about the

1 board and how hopeless they have been and how inept
2 they have been in their conciliation and mediation
3 functions and I came across a very interesting
4 statistic again in a report which was prepared for
5 you by the department which establishes at page 210
6 of Volume 1 of your report - throughout the period of
7 1958 to 1965 conciliation boards settled from a
8 minimum of 40.4% to a high of 55.6% of all disputes
9 referred to them. They settled 1479 disputes, that
10 is 1479 disputes affecting almost a quarter of a
11 million employees. Now I suggest that that single
12 statistic demonstrates the value inherent in a con-
13 tinuation of the present conciliation board process.
14 We also give other reasons in our brief appearing at
15 page 7. But to continue with the AF of L submission....

16 MR. POLLOCK: I will just ask you
17 one question about the example that was chosen as far
18 as the automobile industry is concerned. Now you
19 don't suggest or let me start it this way. The
20 automobile bargaining and techniques have been forged
21 and hardened in another area or jurisdiction.

22 MR. HICKS: Not properly or not
23 justifiable.

24 MR. POLLOCK: Well perhaps but it
25 is the question of who is going to move first. Some-
26 body said the other day are we going to stop bombing
27 before we have peace talks or are we going to have
28 peace talks before we stop bombing. Both parties
29 agree at least to this extent that they are not going
30 to settle on conciliation. They don't think they are

1 going to get the best settlement in conciliation until
2 the hard line strike position is taken and everybody
3 settles and sometimes they have strikes. The auto-
4 mobile industry is probably the best example of parties
5 not going through the ritual fire dance of conciliation
6 without ever hoping to get conciliation. But that
7 union enters into conciliation in many other circum-
8 stances where they feel it is meaningful. You are
9 not suggesting

10 MR. HICKS: And this is where their
11 position is inconsistent.

12 MR. POLLOCK: It is not inconsistent.
13 They are saying that it has been our experience for
14 many years in the automobile industry that conciliation
15 won't help a bit, it never does and we never get our
16 position until we go on strike. In other places it
17 works.

18 MR. HICKS: This of course has
19 been generated and I suggest to a degree artificially
20 generated by the union, to a degree because they have
21 experienced this technique in the States. Secondly I
22 still urge on you that there should be still an out-
23 side authority with the power to decide whether or
24 not a board will be productive or useful. I see
25 nothing wrong with that outside authority continuing
26 to have that discretion. I agree with you on the
27 basic proposition you make but again it is rather
28 interesting if you look again at page 245 of the
29 report. UAW ranked third in the number of strikes
30 in the same period and first in the number of workers

1 involved. I don't know whether that happens to be
2 strictly a coincidence, but it is a fact that the
3 union advocates the very thing we are concerned with
4 namely the concept of no contract no work is the
5 union that has involved the greatest number of people
6 in strikes over the past years. It might be co-
7 incidence but I leave it with you for your own
8 concern.

9 THE COMMISSIONER: Would you state
10 that again?

11 MR. HICKS: According to the report
12 at page 245 UAW ranked third in the number of strikes
13 conducted in Ontario but first in the number of
14 employees involved.

15 (10 minute recess)

16 MR. HICKS: Now Mr. Commissioner
17 two or three further comments on the submission on
18 page 13 there is a discourse concerning management
19 rights and to quote -

20 "present management assumes all of
21 the rights and privileges of the
22 working force not specifically
23 modified by the length of agreement.
24 Unless" and I would ask you to keep
25 that in mind, "Unless it is spelled
26 out in the agreement management can
27 change schedules of production,
28 introduce new methods and speed up
29 production lines, etc. Grievances
30 arising from such matters are not

1 subject to grievance procedure.

2 This results in an accumulation of
3 a great number of grievances for
4 which there is no machinery to have
5 them aired."

6 Now it is not uncommon contrary to this statement sir
7 and it would be a good exercise on your part but I
8 would suggest that perhaps you should have a research
9 on the kinds of terms and conditions already
10 prevalent in agreements relative to the right to
11 grieve in relation to these matters. There are all
12 kinds of grievances throughout the province and in
13 fact throughout the whole country relating to changes
14 in work loads.

15 THE COMMISSIONER: They are tending
16 to become more or less uniform?

17 MR. HICKS: Uniform within the
18 industry sir but for example in the textile industry
19 there is quite a formidable procedure relating to
20 management right to change a work load, the number
21 of looms shall we say to be assigned to an individual
22 employee that is specifically governed by the contract
23 and management will initiate the change and they must
24 follow the rules of the agreement and if the employees
25 or the union contest it they may grieve the assignment
26 and if they can't settle it at grievance procedure it
27 goes on to arbitration. So that I say that contrary,
28 they are very careful in the way they qualify the
29 statement but they made a very sweeping generalization
30 with a qualifying word "unless" and I say in the vast

1 majority of basic agreements industry by industry,
2 there are some kinds of provision relating to wage
3 determination, creation of a new job for example.
4 Throughout the steel industry Mr. Clawson will affirm
5 to this you have CWS a very formidable procedure in
6 fact the procedure itself is embodied in a book of
7 several hundred pages which bears upon the matter of
8 determining the rate paid for a new job and manage-
9 ment has the right to determine that a job shall be
10 created and I don't think any of the unions quarrel
11 with that but CWS then comes in and has a part in
12 determining what the rate shall be and again if
13 there is disagreement on the application of the CWS
14 provision it is subject to arbitration by an outside
15 umpire. So we find so many of these qualified and
16 sweeping generalizations which frankly don't have
17 that much weight when you assess them in depth.

18 MR. POLLOCK: Well they certainly
19 aren't applicable to the older established industries
20 in which bargaining has been going on for many years.
21 Their criticism is probably best levelled at those
22 newly organized industries where they haven't been
23 able to bargain away the residual rights so to speak
24 of management.

25 MR. HICKS: Mr. Pollock again as we
26 submit in our brief, unions have the rights to
27 negotiate when they want and they have the right to
28 require as to negotiate in good faith in reference
29 to matters such as the consequences of technological
30 changes, the consequences of introduction of new jobs

1 whatever form they may take and we have these in many,
2 many agreements as I say.

3 MR. POLLOCK: But it is a question
4 of priority of course on the bargaining table and it
5 is much easier to say as far as membership is concerned
6 that we want more money and we want these better
7 fringe benefits and there is talk about some ethereal
8 contract that hasn't arisen yet. It is like trying
9 to talk about an accident which has not yet occurred.
10 They haven't been able to put their finger on it
11 exactly as to what type of technological change maybe
12 they haven't been bothered by technological change.

13 MR. HICKS: I think frankly that is
14 the real answer but again I would refer you to these
15 statistics made available under the report. The
16 report at page 251 in dealing with major strike issues
17 state that technological change occurred in nine out
18 of 701 settlements or just in excess of 1/10 of 1%.

19 MR. POLLOCK: But you have to add to
20 that I suppose contracting out too because

21 MR. HICKS: That's a separate issue
22 apart from technological change.

23 MR. POLLOCK: But it is the same
24 type of thing.

25 MR. HICKS: But that they can
26 anticipate Mr. Pollock and they do try to ordinarily
27 anticipate and try to negotiate some conditioning of
28 it. The frequency of technological change is
29 interesting and further at page 224 at conciliation
30 in the years '58, '62 and '65 and they don't cover

1 the full ten-year period, there is an incidence of .5%
2 at conciliation of the issues involved with conciliation
3 in comparison with the totality of issues concerning
4 conciliation. So that we say two things fundamentally.
5 One the issue of technological change is substantially
6 a red herring, there is no real substance to it and I
7 suggest that it would be very difficult indeed for any
8 of the major or other unions to point to one strike in
9 Ontario that has been related to provincial industry,
10 to technological change, or the right to negotiate.

11 MR. POLLOCK: Except the inter-
12 national typographical strike at the newspapers.

13 MR. HICKS: Well now just a minute
14 sir that was settled three times.

15 MR. POLLOCK: But that was
16 definitely a strike.

17 MR. HICKS: And it was reconciled.
18 It was reconciled at the local level three times. But
19 there was a reconciliation so we say first of all
20 there is no substance basically to the position on
21 this matter of technological change. Secondly we say
22 that in any event and we are not dealing with highly
23 sophisticated unions with all these resources at their
24 disposal and all the experts available to them. They
25 come in with plans that are relative to these matters
26 and our position is that these should be matters for
27 negotiation and the parties to work out the con-
28 sequences or the impact of changes from technology.

29 THE COMMISSIONER: Would you say the
30 generality of negotiation assumes on the part of the

1 union a representative who is familiar?

2 MR. HICKS: Oh yes sir and bear in
3 are mind there / staffs of experts and consultants and we/ are
4 not quarreling with this but they have regular seminars
5 for their rank and file members dealing with these
6 issues and they are very instructive.

7 THE COMMISSIONER: What do the
8 employers do in that sense?

9 MR. HICKS: In that sense sir they
10 also engage in seminars and through the Association for
11 example and periodic seminars relating to these
12 difficult bargaining issues and this is also done at
13 an informal level where from time to time a group will
14 get together and take a look at the problem and see
15 its impact and its effect and what can be done to
16 accommodate industry to it.

17 MR. POLLOCK: The only other comment
18 that probably arises out of the union position in that
19 case and I don't say rigid but formalistic interpreta-
20 tion of the collective agreement by some arbitration
21 boards that and perhaps correctly so that this matter
22 is not arbitrable. Now how does that affect the
23 people in the plant. They feel that they have a
24 legitimate beef and they are stopped from doing any-
25 thing because (a) they can't strike during the
26 currency and (b) the arbitrator said it is not
27 arbitrable and the only answer to them is to say well
28 if you want to settle that thing wait until the contract
29 opens up next year and we'll settle it but by that time
30 probably people have been layed off or people have been

1 discharged or something like that and the thing is
2 gone and it is too late to talk about it so that they've
3 got this frustration, this sense of frustration that
4 exists during the currency of the agreement and
5 probably loss of force when the party is free to strike.
6 I'm being the devil's advocate here.

7 MR. HICKS: Frankly I suggest that
8 this issue is highly exaggerated. I could ask any
9 one of the gentlemen here representing steel and
10 electrical controls and refrigerator production and
11 so on if in their experience it has ever occurred, and
12 I could give you the answer. But let us assume that
13 it does occur. We each go into an agreement assuming
14 there will be certain risks and we will each try to
15 anticipate that kind of risks may arise effecting our
16 respective positions during its currency. Now
17 obviously neither party can anticipate everything but
18 they do have the opportunity in bargaining to endeavour
19 to anticipate everything and to endeavour to negotiate
20 a provision or condition applicable to that, whatever
21 the anticipation may be and the form it may take. Now
22 our fundamental position is we paid for a contract and
23 the only thing that the employer really in practical
24 terms realizes in settling an agreement is a pre-
25 determined period of stability. There is nothing
26 else. There is nothing else available to the employer
27 in the terms of collective agreement. In terms of
28 that period of stability he can look to his marketing
29 and he can look to his production and he can look to
30 his promotion and he can plan and without that there is

1 a total lack of planning. He would be frustrated to
2 a far greater extent in terms of frustrations and let
3 us think in terms of what is going to be more
4 deleterious to the work force, the inability of the
5 employer to plan effectively to provide work for the
6 individuals, or the frustration of the employee during
7 the term of the contract over some kind of change that
8 wasn't fully anticipated but which subsequently and
9 ordinarily be corrected. Now I say on balance that
10 the stability that is necessary to conduct industry
11 in today's scheme of things, competitive as it is,
12 must over-ride that measure of frustration which I
13 say to you is really minimal in practical terms on
14 the part of employees. Again we have to weigh the
15 effects as they prevail and apply to both parties and
16 here I say that the overriding concern surely of both
17 parties to the deal is that there will be an oppor-
18 tunity for the employer to plan the employment for
19 his people during the term of the agreement. Now if
20 he is going to be faced with the threat of a strike
21 or the right to strike in mid-term then of course
22 his planning goes out the window and his ability to
23 gamble as to what his share of the market will be is
24 that much worse.

25 THE COMMISSIONER: These agreements
26 have been going on for twenty years or more.

27 MR. HICKS: Some of them sir, yes.

28 THE COMMISSIONER: And they have
29 covered for the last ten years say pretty nearly
30 every question that can arise haven't they?

1 MR. HICKS: In principle yes.

2 THE COMMISSIONER: Then why does it
3 take so long to negotiate, say tomorrow?

4 MR. HICKS: I am going to ask one
5 of my confreres here. I would like to ask Mr.
6 Clawson to speak.

7 MR. CLAWSON: This question sir of
8 why does it take so long in that respect or in many
9 respects it can be said that one of the main reasons
10 for the extended negotiation and this is the result
11 of personal experience, has been due to the unions own
12 political problems with its membership. I am not
13 saying that is the only reason but there are other
14 reasons that the issues are complicated, that there
15 has to be or there is a drawing together and that
16 the company thinks the unions demands are outrageous
17 but

18 THE COMMISSIONER: I can understand
19 that on the money but sir the conditions of work.
20 They have been gone over and over again in five or
21 six occasions.

22 MR. HICKS: Yes but look at the
23 demands of the union on Ford and which is typical of
24 that whole industry, just three years ago or two and
25 a half years ago. Clause after clause after clause
26 for which managements thinks an effective compromise
27 has been affected and which has been part and parcel
28 of an over-all compromise in terms of a settlement
29 but it faces re-opening again.

30 THE COMMISSIONER: Then these more

1 or less settlements are modified almost from the
2 beginning.

3 MR. HICKS: Yes sir, it is wide
4 open. Let us look at the last INCO contract. The
5 steel workers re-opened every provision in their
6 collective agreement but three. Every provision
7 but three and that contract has been in force I guess
8 for fifteen years.

9 THE COMMISSIONER: Well I don't
10 suppose you would have any idea of how many material
11 provisions were modified materially?

12 MR. HICKS: Frankly I don't. There
13 were some but this is the thing that delays bargaining
14 because you don't know where they are serious and
15 where they are not and where they put some padding in.
16 And this is what takes time to sort out, it is one of
17 the principle time factors to sort out what is
18 critical and what is important and what is trivial.

19 THE COMMISSIONER: Is the union
20 exercising more futility in these suggestions than
21 the employer?

22 MR. HICKS: Quite frankly yes sir.

23 MR. POLLOCK: Because if it is
24 unsaid it belongs to you anyway.

25 MR. HICKS: Yes that is the current
26 philosophy.

27 MR. CLAWSON: I thought I might just
28 add Mr. Commissioner and Mr. Pollock that just the
29 case history for instance and I mentioned something
30 about the political problems and the union officers

1 and their negotiating teams have

2 THE COMMISSIONER: Could you give an
3 illustration of that?

4 MR. CLAWSON: I shall yes. A few
5 years ago in one of our negotiations we happened to
6 have a union president and a union negotiating
7 committee but several months before you might say he
8 tried to indulge in an excess of democracy several
9 months before the agreement was to come open, he
10 invited not only every chief steward and steward but
11 every employee to send in changes that they wanted
12 in the agreement. These came in and first of all
13 they found themselves with a tremendous problem of
14 logistics. I don't say that they didn't cut down
15 on some of them but in the ultimate the demands were
16 put forward because they didn't have the political
17 courage, after all the union is a political institution
18 and I don't condemn that but it is in the very nature
19 of things. But these were all thrown at us and they
20 probably realized that not only were some of them
21 foolish and wholly impractical and unattainable and
22 yet it dragged on a long time that year because again
23 they having brought this up they were afraid to go
24 back and tell them no we cannot get this. We
25 recommend that you take something much less. This
26 is one of the natural problems in collective bargain-
27 ing and one of the reasons for the delays, and the
28 union professionals will often say privately that yes
29 on this certain provision I agree that this is not a
30 practicable thing but I don't think I'll be able to

1 sell my membership on it or my committee and this is
2 one of the problems sir.

3 MR. POLLOCK: Of course that is the
4 problem your brief raises on page 3 which says unions
5 sometimes seem to forget that their mandate to
6 represent the employees can only be achieved and
7 maintained with the consent of the employees. They
8 must at all times remain the agent of the employees
9 and not be permitted to usurp employees' right of free
10 determination. They are in the position of being
11 damned if they do and damned if they don't. I
12 appreciate that this is a very difficult position,
13 the political aspect of it and it probably comes to
14 the easiest realization when after months of hard
15 negotiation between the company negotiators and the
16 union negotiators and they think they have pounded
17 out a pretty good agreement, the experts have, but
18 the matter is referred to the union for ratification
19 and they perhaps turn it down in their wisdom or lack
20 of wisdom. Then the people say there ought to be
21 power in the negotiating committee to accept it, but
22 on the contrary they say if the negotiating committee
23 rejects it they ought to let the membership vote on
24 it to see if they really want it so I suppose you use
25 the term of whose ox is getting bored and I suppose
26 when democracy helps you you want it to be in the
27 holigarchy....

28 MR. HICKS: You touched a very
29 sensitive point and one that frankly bewilders us but
30 it represents a dilemma from our point of view for

1 the very reasons that you have mentioned. And we are
2 looking to the Commissioner to find the answer this
3 time. We think there must be an answer and we think
4 in his wisdom an answer can be found.

5 THE COMMISSIONER: Well what do you
6 suggest, even a possibility more than one or any one?

7 MR. HICKS: Well sir there are some
8 alternatives.

9 MR. POLLOCK: There are really only
10 two, yes and the alternative no.

11 MR. HICKS: Well there are some
12 variations of those. For example the bargaining
13 committee could be empowered to settle and consummate
14 an agreement unless the employees by petition as a
15 prerequisite to a vote sought to set it aside. Kind
16 of changes the onus a bit. It puts in a sort of
17 dual condition against ratification being upset.
18 There are those kinds of mechanical, if you will, con-
19 ditions that might be a procedural condition rather
20 that might be introduced so that everyone gets a
21 second look at it and in ^{an} appropriate time before they
22 formally and officially decide to reject it.

23 THE COMMISSIONER: Well these
24 negotiating groups, are there any representatives of
25 actual workers in the plant?

26 MR. HICKS: Yes sir almost
27 invariably, with one exception perhaps. In most
28 cases there are some employees on the bargaining
29 committees. We have indicated to you our concern
30 over the dilution from the act in 1964 of the

1 requirement of the committee being comprised of
2 employees together with professional associates.

3 THE COMMISSIONER: What I have in
4 mind is this. What has been suggested is this so-
5 called sweetheart agreement, that is I assume that to
6 mean that the professions at least are not acting in
7 good faith in relation to the union. Is that right?

8 MR. HICKS: In that context sir I'm
9 not sure I follow you.

10 THE COMMISSIONER: Well you are
11 negotiating an agreement between labour and management.
12 For its own interests the professional group

13 MR. HICKS: Oh yes they can have a
14 very different interest from the rank and file.

15 THE COMMISSIONER: Well I'm asking
16 about a representative of the rank and file if it
17 wouldn't tend to nullify any suggestion.

18 MR. HICKS: Oh my yes sir, we agree
19 entirely and we think it should be restored or re-
20 instated in the act.

21 THE COMMISSIONER: Well how is that
22 governed by the act?

23 MR. HICKS: Well the act required
24 until 1964 the bargaining committees of unions be
25 comprised of employees, and that was removed from the
26 act.

27 THE COMMISSIONER: Why was that?

28 MR. HICKS: There was no reason
29 given.

30 MR. POLLOCK: I think there was a

1 reason given.

2 THE COMMISSIONER: Well prior to
3 that had there been any charges that agreements by
4 reason of the danger

5 MR. HICKS: None that were ever
6 made public sir.

7 THE COMMISSIONER: Has this practice
8 though of submitting to a vote of the union always
9 been effective?

10 MR. HICKS: Oh yes.

11 THE COMMISSIONER: So it has always
12 been referred back to the union?

13 MR. HICKS: Oh yes.

14 THE COMMISSIONER: And you say
15 there is a certain security in having workers and
16 employees present on the negotiating committee. Is
17 that agreed? Is that the general opinion of the
18 employers?

19 MR. HICKS: Yes sir unquestionably.

20 MR. POLLOCK: Well it was suggested
21 at the time that you could in small units; it was not
22 feasible if you had a production unit of ten men to
23 have a representative come from that unit because
24 they just couldn't spare the time

25 MR. HICKS: Yes it could be waived.

26 MR. POLLOCK: Some of the employers
27 had, as I understand it, said we can deal better with
28 the professionals than we can with some of the rank
29 and filers because they understand economics and they
30 understand comparing one business against another.

1 MR. HICKS: Well that may be.

2 MR. POLLOCK: I'm not trying to
3 justify the act of the legislature.

4 MR. HICKS: But one of the values
5 of bargaining is an understanding of the result and
6 conveying that understanding to the people in the
7 plant. Obviously/^{if}there are people in the plant at
8 the bargaining table they are going to have a better
9 appreciation of all that went into the deal than if
10 they are simply told off a platform by a union pro
11 what took place, or what are really the results
12 because it is impossible to convey the atmosphere
13 and all the work that goes into the negotiation of
14 a contract.

15 THE COMMISSIONER: It would seem
16 to be the most effective way of demonstrating that
17 these negotiations were carried out in good faith.
18 Whether he took an active part or whether their
19 representative of the workers took an active part
20 in that, he is observer at least.

21 MR. HICKS: That is quite right sir.

22 MR. CLAWSON: I think the
23 Commissioner and Mr. Pollock will see now why we are
24 so concerned at the possibility of any interference
25 with stability and the possibility of negotiations
26 on strikes during the term of an agreement. We have
27 first of all the long laborious process of hammering
28 out an agreement with the negotiating committee. We
29 have this hazard that was referred to here, even
30 after a memorandum has been signed and hands have

1 been shaken and submitted to the membership and it is
2 repudiated. Now we don't have any easy answer to that
3 problem, but having gone through all that and when
4 they have had complete opportunity for instance on
5 contracting out the union has had an opportunity to
6 ask for it and they failed to ask for it or they have
7 asked for it and given it up for good reason. Then
8 if that problem comes up during the term of the agree-
9 ment then the hazard or risk of a strike during the
10 term of an agreement which we have really paid for
11 in our negotiations, this is the thing that concerns
12 us.

13 MR. POLLOCK: Well of course the
14 negotiations of the contract out item depends on a
15 mutuality of knowledge. Now in determining whether
16 it is more important to go down the line on contracting
17 out the union has to assess the possibility that is
18 going to effect the unit within the currency of the
19 agreement. Management may in fact know that they
20 are already negotiating to contract out part of the
21 work that is done in the plant, either janitorial
22 service or some part of the units work and in some
23 cases in good faith management says that "we are going
24 to do this" now what do you want to say about con-
25 tracting out? It would be very nice if all manage-
26 ment did that but there are cases when they don't and
27 they know this is going to happen and they know when
28 they sign this agreement that there is going to be a
29 fundamental change to the work place that hasn't been
30 contemplated by the union and then under that blanket

1 or umbrella of the collective agreement they say you
2 didn't say that we couldn't do it and we are going to do
3 it even though it was in their mind at the time. That
4 is the type of frustration that causes bitter feelings.

5 MR. CLAWSON: Bitter feeling on the
6 part of whom Mr. Pollock? We deal with collective
7 bargaining in unions and unions represent the employees
8 and in negotiations most of the major unionsthey've got
9 a lot of professional people and skilled and able
10 people. Now if they have made up their mind and they
11 want a restriction on contracting out. They have
12 dropped. All I am saying is why should they then
13 contend that if the agreement is signed for three
14 years the contracting out issue comes along why should
15 they complain about the company doing it. The union
16 has not negotiated any provisions.

17 MR. POLLOCK: That is not exactly
18 the circumstances I put to you. If at the time of
19 negotiation the company knows that it is going to
20 contract out one of these things and the union can
21 only guess that it is going to happen, they can say
22 well it probably won't be important this term but if
23 the company had said to the union we are going to
24 contract out some of this work then contracting out
25 would have been a very, very important issue.

26 MR. CLAWSON: Well I've known cases
27 where they knew there was going to be contracting out
28 and the union still gave up its right.

29 MR. POLLOCK: But I'm not quarrelling
30 with that.

1 MR. CLAWSON: Well we either have
2 free collective bargaining or we don't.

3 THE COMMISSIONER: But at any time
4 they could ask for it.

5 MR. HICKS: We are saying that there
6 is a deal and it should last for its term and the union
7 should have every opportunity with all their skill and
8 assistance to bring issues up in bargaining which is
9 the appropriate time to deal. I think that is the
10 substance of this.

11 MR. CLAWSON: Yes and further more I
12 might add that I don't think there are many cases where
13 an employer deliberately has it planned to do something
14 and conceals it and then does it. I mean that most of
15 the major companies have developed a rapport with their
16 unions, a relationship that would inhibit that and you
17 can only get away with that once or twice. I should
18 emphasize that point too.

19 MR. HICKS: Mr. Commissioner and Mr.
20 Pollock on page 18 of the OFL brief they make an
21 alternative proposition to the effect that either the
22 act should spell out clearly what is meant by bargain-
23 ing in good faith and the penalties imposed for
24 violation, or that the timetables in the act be
25 strictly adhered to by all parties to the proceedings
26 including the department of labour." Now we have no
27 quarrel with the second half of the alternative. I
28 wouldn't want that to impute however that we are
29 critical of the Department of Labour. They are doing
30 the best they can under very difficult circumstances.

1 We are opposed to any attempt to introduce into the
2 legislation the definition of bargaining in good
3 faith. We think it is incapable of definition in
4 any absolute sense. It is a question of fact, it
5 is a question of attitude and some very nebulous sort
6 of conditions, reasonableness of the demands of the
7 company's counter proposals, all enter into what is
8 bargaining in good faith.

9 THE COMMISSIONER: Well Mr. Hicks
10 really if they have read carefully they are contrary
11 to the revision of the labour act.

12 MR. HICKS: Well I wouldn't want to
13 leave that without comment sir.

14 MR. POLLOCK: You had something you
15 were going to give us.

16 MR. HICKS: It was in terms of the
17 judgment as to what is terms of bargaining in good
18 faith.

19 MR. HICKS: Sir what was your
20 intention about a luncheon adjournment?

21 MR. POLLOCK: We usually break at
22 one o'clock. Would it be more convenient for you to
23 break now Mr. Hicks?

24 MR. HICKS: No thank you Mr.
25 Pollock it would be whatever your convenience would
26 be. We have nothing else by way of formal reply to
27 the OFL submission. As I mentioned at the outset
28 we feel that our own submission answers basically the
29 points it raised and we are now at the stage I think
30 where if further questions from the Commissioner or

1 Mr. Pollock sir, then we might invite them.

2 THE COMMISSIONER: Well I think you
3 have prepared your submission here with careful regard
4 to topic and perhaps you could go through it and let
5 us have any observations you might want to add to the
6 submission or to simply emphasize orally the point or
7 consideration which you have set forth. I find that
8 sometimes an oral appreciation is better than a
9 visual one.

10 MR. HICKS: Well sir could we
11 approach it in perhaps a little different fashion.
12 There are four or five basic areas involved in the
13 matter of labour dispute. As we see it and we have
14 emphasized in our brief the root causes of some of
15 the disputes lie in the certification process itself.

16 THE COMMISSIONER: Would you
17 elaborate on that please.

18 MR. HICKS: If I may refer you sir
19 to our brief on page 13 employee opposition to
20 certification. Here our concern is in the absence....

21 THE COMMISSIONER: Well Mr. Pollock
22 has some questions he would like to ask and it might
23 make it more convenient for you.

24 MR. POLLOCK: I have made some
25 notes about this thing as I read through it and I
26 think my first questions start and perhaps in answer-
27 ing the question we can talk around the points that
28 have been raised. My first question starts on page 4
29 and it is under the topic of the economic waste of
30 strikes. In your paragraph commencing and "only too

1 often when strikes occur the unions insist in many
2 cases on picketing not merely the operation of their
3 own bargaining unit but the whole organization, can
4 only add ^{to} disorder, confusion and harm to innocent
5 individuals." Now I appreciate that in some circum-
6 stances the picketing can easily be restricted to the
7 one plant because there is only one plant, and in
8 those cases where there isn't any other aspect to the
9 labour dispute in the sense of industrial warfare,
10 there aren't any allies anywhere else to assist them,
11 the attitude as I understand it of the unions is that
12 if we are going to go to war we have to fight not
13 only the prime enemy but also his allies, also those
14 people he has enlisted in his support to weather the
15 storm, that is he may sub-contract out the whole of
16 his production unit to last the conflict. He may
17 sub-contract out some parts of it so that he can
18 continue to exist. Well all the unions say in those
19 circumstances is that if he is going to expand his
20 area of operation we ought to expand our area of
21 operation to meet that. What is your view on that
22 point?

23 MR. HICKS: I think fundamentally
24 you will recall our basic premise in the introduction,
25 that having regard to the public interest which is
26 the overriding consideration that the strike should
27 be contained and not disseminate apart or outside or
28 beyond the central issue namely where the strike or
29 where the facilities involved are on strike. We say
30 that this is contrary to the public interest because

1 it is an unreasonable and unnecessary extension of the
2 strike. It involves persons and businesses who are
3 foreign to the situation, who have made commitments
4 perhaps unwittingly in terms of there being a strike
5 and who should not therefore become involved. But
6 our fundamental thesis is that this represents an
7 extension of the problem and a fanning out of the
8 problem whereas the problem should be curtailed and
9 confined to the original source.

10 MR. POLLOCK: Of course it is not a
11 unilateral extension in all circumstances. If after
12 the strike has arisen management feels and if it is
13 legitimate for management to try and exist during the
14 strike and I am not quarrelling with that by any
15 method, then perhaps it would be to their advantage to
16 get some other shop to do some of the work for them.
17 I am not talking about areas that have already been
18 contracted out, I am talking about the method of with-
19 standing the strike that is already occurring. If
20 management elects in some ways to spread its operation
21 then all the union is saying why can't we spread with
22 it. There is the First World War type of thing, they
23 don't want to be outflanked and they'll run their
24 trenches to the sea.

25 MR. HICKS: Well first they are saying
26 it is spreading the infection if you will and the most
27 infectious or obnoxious features of a strike, and
28 secondly it creates a further imbalance between the
29 positions of the parties.

30 THE COMMISSIONER: Why are these

1 strikers reemployed by other employers? There is a
2 direct extension of it and the very question we started
3 discussing was aimed at establishing exactly the
4 conception that you have advanced now. Leave it to
5 those two parties.

6 MR. HICKS: But I think there is a
7 and
8 distinction between the employees/in fact I don't see
9 any distinction in terms of the alternative rights or
10 remedies or relief available to the parties. On the
11 one hand the employer and this is so exceptional where
12 it is feasible or possible for him to contract out any
13 part of his production, it is so rare or very seldom
14 occurs and conversely the employees can take alternative
15 employment.

16 THE COMMISSIONER: They can because
17 there are other employers who are opening their doors
18 to them.

19 MR. HICKS: That is right sir but
20 there would be no practical way I would suggest in
21 which there could be a sanction introduced against
22 employees taking alternative employment.

23 THE COMMISSIONER: Why yes certainly.
24 They could be deprived of the benefit of Section 12.

25 MR. HICKS: You've got to find the
26 employee wherever he may be.

27 THE COMMISSIONER: Well it doesn't
28 apply in the case of large employment.
29 When it is a strike that is effective the plant stops
30 and therefore it is confined to small industry.

MR. HICKS: But even there the

1 employee may leave the community and he may go into
2 another jurisdiction.

3 THE COMMISSIONER: Well I don't
4 think there would be any difficulty in finding out
5 whether he got new employment, and if he did you could
6 say well you are not entitled to the benefit of the
7 act.

8 MR. HICKS: He may be even acting
9 as an individual contractor and he may go into paint-
10 ing or carpentry work or he may do work in his home.

11 THE COMMISSIONER: Well that might
12 be considered a withdrawal from the stages of employee.

13 MR. HICKS: Then how do we enforce
14 this sir, this is our problem?

15 THE COMMISSIONER: Because he loses
16 all his rights.

17 MR. HICKS: But you have to prove
18 this.

19 THE COMMISSIONER: Of course there
20 is the question of proof but that is present every-
21 where.

22 MR. HICKS: Yes sir but I think
23 this must be intrinsic and then the element of proof,
24 the opportunity of proving it and we say to you with
25 respect

26 THE COMMISSIONER: Well let me give
27 you one example and I understood and this is hearsay
28 that as the result of one strike in this country a
29 competing employer engaged the strikers and then
30 boasted of the scope of the employment and the success

1 that followed it.

2 MR. HICKS: I perhaps know of the
3 situation of which you speak but it is a very
4 exceptional situation, and I think it is very dangerous
5 to generalize from.

6 THE COMMISSIONER: Well the only
7 generalization I'm suggesting is that the employees
8 themselves could conceive a unity of interest just as
9 the unions are and they could act together.

10 MR. HICKS: Sir they are just not
11 made that way.

12 THE COMMISSIONER: But to the extent
13 of not employing the striking persons.

14 MR. HICKS: Well just believe me sir
15 that they are just not made that way.

16 THE COMMISSIONER: Well that has
17 to be written out of any action by employers.

18 MR. HICKS: Again by virtue of the
19 very situation of which you speak, and I know that
20 situation.

21 MR. POLLOCK: It's not that they
22 love each other more but they hate each other less, let
23 us put it that way. Now the only question I have is
24 I wonder if you could draw a distinction between the
25 justification for the spread of conflict where the
26 means of production of the plant is no longer confined
27 to the plant.

28 MR. HICKS: Just on the basis that
29 the employee has full freedom of opportunity of taking
30 alternative employment, the alternative should equal

1 freedom to place his production elsewhere.

2 MR. POLLOCK: I'm not saying to
3 curtail it but let them picket that plant and notify
4 people that this plant is producing work from a struck
5 plant or it is producing or assisting a striker. That
6 is the position I wonder if you could comment fuller on
7 it. I think we could get in that a little further on
8 when we talk about secondary boycotts.

9 MR. HICKS: Mr. Pollock maybe I
10 could put it this way, and I'm not speaking for the
11 Association at this stage because frankly we haven't
12 contemplated this question. But speaking personally
13 if there was information on it then I would have to
14 agree with you, that is information prohibiting picket-
15 ing.

16 MR. POLLOCK: All I quarrel with is
17 the use of the individual. I don't think all of these
18 people are innocent. Some are and some aren't.

19 MR. HICKS: I'm not sure that this
20 regularly takes place so I am not too sure.

21 MR. POLLOCK: The next point we dis-
22 cuss or we have discussed to some extent and that falls
23 under union membership repudiation of settlements. It
24 has been suggested that the final offer of the company
25 ought to be referred to the membership and that they
26 ought to vote on it and if they reject it then it is a
27 strike question. Now if you take that, the difficulty
28 is to find out what the final offer of the company is
29 and I say in some cases this repudiation by unions is
30 a product of a management action and it takes its

1 effect this way. The union negotiating committee
2 negotiates after long and difficult times with the
3 employer and they come to what they think is the best
4 position that the employer is going to offer and the
5 employer says yes that's as far as we can go and he
6 believes that and in good faith he goes back to the
7 meeting and says to them you must accept this offer or
8 otherwise it is a strike. And for some reason
9 unbeknownst^{to} this bargaining committee they say "no
10 we're not going to accept it" and the strike doesn't
11 occur because immediately after that management turns
12 around and says "we'll give you five cents more or
13 ten cents more" and the membership immediately say "aha
14 you see we could get more out of them." Then this
15 whole technique all the way up along through the
16 conciliation procedure and you get a new plateau at
17 every stage. It is to keep trying, keep trying he's
18 going to give you this and maybe he'll give you some
19 more, and I'm not suggesting a hard line approach by
20 management but I am saying that in some cases their
21 evil is a product of their own actions.

22 MR. CLAWSON: Well first of all Mr.
23 Pollock I think in most cases the way you've described
24 it is not the way it happens. Now we and I think
25 this goes for most of the companies here when we go
26 through six months of negotiation we do not put a
27 final offer on the table and say take it to the
28 membership. We sign a document that maybe consists
29 ⁱⁿ of/some cases it's almost as long as the original
30 collective agreement. Everything is spelled out and

1 it specifically states that this settlement has been
2 agreed to by the negotiating committee and it under-
3 takes to recommend its acceptance to the membership.
4 So it is not just taking some ambiguous offer to
5 the union. This is a contract subject only to
6 ratification. Now what you are saying about the
7 other problem and I'm sorry I should add further. In
8 most cases and there have been cases where the union
9 may have said well we signed this thing but we would
10 just as soon you repudiate it. This is not the real
11 problem. I am talking about the situations where it
12 was just as embarrassing to the union negotiating
13 committee and the officers as it was to the company.
14 It was in effect a vote of non-confidence in the
15 negotiators and they did their very best to get the
16 employees to ratify this. Now the problem you
17 mention where employer can sometimes add some more,
18 this is in all the theory and practice of collective
19 bargaining techniques, this is one of the worst things
20 one can do because it leads to that sort of thing and
21 it encourages this repudiation. Nevertheless in the
22 situation that we have had in the past year some of
23 this has crept in. The next time it happens it
24 may be that somebody is going to have to learn a
25 lesson and they're going to find out that we're not
26 going to do that everytime and they can't get two or
27 three bites of the cherry, but there were very special
28 circumstances.

29 MR. HENLEY: Mr. Commissioner and
30 Mr. Pollock there's a great deal of fascination with

1 this question of repudiation by membership but it is
2 really a phenomena of the last couple of years and I
3 suggest that there is perhaps undue preoccupation
4 with it. It is an outgrowth of an extremely pros-
5 perous economy where employees in a full employment
6 market are not ready to conclude that the last offer
7 has been made and I think that we can get carried
8 away with our concern that this is necessary in
9 collective bargaining relationship. After all it
10 is pretty fundamental in any bargaining situation
11 and this doesn't restrict itself to labour relations
12 that is the basic principle of "make sure you leave
13 nothing on the table." In this rather boyant economy
14 we've had one more step introduced in a given
15 situation to ensure that nothing is left on the table.
16 I would be reluctant to conclude that the continuing
17 feature of the relationship.....

18 MR. POLLOCK: It may not be con-
19 tinuing in that aspect Mr. Henley but certainly
20 judging from the American experience now which is
21 becoming more prevalent in the United States in the
22 last few years and it is not the fact that it exists
23 but the fact that the parties know that it exists and
24 that there may be a reluctance of some management to
25 say well they're probably going to use this technique
26 and let us hold back a little bit so that we can give
27 them what we have to give them, and the unions think
28 that they know that you know that they know that you
29 know, and it is that type of attitude that in a way
30 has a very insidious affect on the good faith

1 negotiations even though you may not use it and the
2 unions may not use that technique, it is a successful
3 tactic in some places.

4 MR. HENLEY: Well let us look at
5 the other situation or reverse situation Mr. Pollock.
6 In the United States, in the United States of putting
7 your final position first and which has been a
8 tradition according to the literature of a competitor
9 of mine and yet that some mode of bargaining has
10 taken that corporation into court for failing to
11 bargain in good faith. So that there are other
12 phases.

13 THE COMMISSIONER: Since the repeal
14 of that decision calling for representation of the
15 workers on the committee have there in fact been
16 workers on the negotiating committees?

17 MR. HENLEY: Yes.

18 MR. HICKS: Ordinarily yes sir.

19 MR. HENLEY: While I am on my feet
20 sir in that context the matter of no employee
21 representation on the bargaining committee and it is
22 not required since 1964 as Mr. Hicks said. We have
23 had the experience ourselves prior to 1964 of having
24 a union certified after a hard-sell campaign in the
25 company we believe with a good deal of coercion and
26 then to receive after certification no demand to
27 begin bargaining for the reason that the union was
28 unable to get the employees to sit on the bargaining
29 committee. Now it represents I think a defect
30 in the certification procedure.

1 THE COMMISSIONER: Why would that be?

2 MR. HENLEY: Because union member-
3 ship was achieved through duress, intimidation and a
4 great deal of persistence.

5 MR. POLLOCK: They would use their
6 hourly rate, wouldn't, they while they were negotiating?

7 MR. HENLEY: Well this is the
8 practice in the company I work for, yes.

9 MR. HICKS: But the union usually
10 compensates them.

11 MR. POLLOCK: The union would pay
12 them yes but if the union wasn't prepared to pay them
13 that
14 then perhaps/would be the reluctance on the member-
15 ship of the unit to become part of it. We are all
16 very selfish people.

17 THE COMMISSIONER: Well under
18 compulsion are they not remunerated in some way, have
19 they no right to remuneration when they are working
20 on this agreement?

21 MR. HICKS: There is no statutory
22 or common law rates, no.

23 THE COMMISSIONER: The statute says
24 there must be representation but made no provision
25 and

26 MR. HICKS: That is right but there
27 is a practice of the union compensating them.

28 MR. POLLOCK: And some companies do
29 compensate them.

30 MR. HICKS: That would be a very
small minority.

1 THE COMMISSIONER: That wouldn't be
2 under the provisions of allowing the union men to
3 work on company time.

4 MR. HICKS: No sir. As a matter
5 of fact in some negotiations they are compensated
6 by negotiating in the evening or on week-ends and it
7 may be a combination of negotiating through the week
8 or week-ends and the odd evening.

9 MR. POLLOCK: Turning now to the
10 consideration of prohibition of strikes in public
11 service. You very ably point out the difficulty in
12 establishing criteria and also the difficulty in
13 establishing what are the public service or the
14 public interest type of disputes. I want to clarify
15 one thing. In your approach to determining what is
16 a public interest dispute you take the functioning
17 approach in the sense that it is the nature of the
18 function being performed by this particular operation
19 that is the determining factor as to whether or not
20 it is a public interest matter, or perhaps do you
21 limit it in some of your discussion here the public
22 service to those areas that are paid for out of the
23 public purse?

24 MR. HICKS: It is a combination of
25 both actually. I don't think you can adhere strictly
26 to the functional purpose such as health or safety
27 which we have emphasized. We go beyond that and
28 say that public service per se because they are so
29 involved now in the life of the country in all its
30 aspects that in effect a strike against the State is

1 just/untenable condition.

2 MR. POLLOCK: Well carrying the
3 attitude of private enterprise into the government
4 field which probably has gone the farthest in
5 Saskatchewan originally where they would take over
6 and pay an employee or a group of people to manu-
7 facture paper boxes.

8 MR. HICKS: Well that would be an
9 exception of the general rule.

10 MR. POLLOCK: That is right and it
11 doesn't matter where it comes from.

12 MR. HICKS: Except that there again
13 you've got this overriding problem of a political
14 criteria perhaps finding its way into the settlement
15 dispute and this is fundamentally what concerns us
16 most in the public sector in that you have political
17 implications or considerations that are inherent in
18 the matter. It is inescapable that if there is a
19 critical dispute that a political factor doesn't come
20 into play, a political influence. Even take your
21 paper box plant in Regina or wherever it was or a shoe
22 plant in Saskatchewan, there could still be the risk
23 of political interference in the result because the
24 image of the government might be involved and
25 adversely affected. So that is why I say it is a
26 combination of factors or a combination of both the
27 function and the public service element. The
28 political criteria we think is there and so implicit
29 in it that it is inescapable and it is deliterious
30 to the settlement and to the impact of that settle-

1 | ment in the private sector.

2 | MR. POLLOCK: On the seventh page
3 | where you talk about I guess it's a reply to my
4 | question that strikes should sometimes be forbidden
5 | and what effective mechanism can be created to
6 | settle disputes between the parties. Well there is
7 | apart from the traditional concepts of conciliation
8 | and those type of things, there is rather a unique
9 | set up in the United States and I think it is in
10 | Maryland, but a statutory strike. It only of course
11 | would apply to private interests in the profit making
12 | interests in the public sector and what really right-
13 | fully occurs is that it is available to the governor
14 | to declare that this type of strike exists in which
15 | they freeze the profits of that company or the profits
16 | of the company go to the government and the wages of
17 | the employees are frozen at the old level until they
18 | reach a new contract in the sense that they are perhaps
19 | only a portion of the old level. The companies can
20 | operate the plant and it makes no, or reduced profits,
21 | and the employees can work but make little economic
22 | gain.

23 | MR. HICKS: Well is this a public
24 | enterprise or is it a government enterprise?

25 | MR. POLLOCK: Well I suppose the
26 | best example would be a public utility I'm sorry a
27 | utility that is owned by a private concern for example
28 | if Ontario Hydro was owned privately or B.C. Electric
29 | for example, those type of things.

30 | MR. HICKS: It is almost a form of

1 | expropriation.

2 | MR. POLLOCK: It is in a way. It
3 | accomplishes the effect of continuing the vital
4 | service but it makes both of the parties uncomfortable
5 | to almost the same extent as if there had been a
6 | strike. I wondered if your organization had given
7 | any consideration to that type of an approach?

8 | MR. HICKS: Frankly no and I don't
9 | think any of us had heard about it here in Canada.

10 | MR. POLLOCK: Well it comes to the
11 | same old question that you can't make men work if
12 | they don't want to.

13 | MR. HICKS: That is right sir and
14 | it seems to ignore that.

15 | MR. POLLOCK: In some ways there
16 | hasn't been that terrific experience with it but at
17 | least as far as the employees are concerned the fact
18 | that they have reduced the employer's profit makes
19 | them a little happier to go to work under those cir-
20 | cumstances. They are not the only martyrs.

21 | MR. HICKS: Well that can work to
22 | the detriment of the employees. The lower the profit
23 | the lower the take.

24 | MR. POLLOCK: That perhaps may be
25 | true.

26 | MR. HICKS: Ordinarily it is
27 | afiomatic and this is where the whole thing
28 | to me falls flat on its face.

29 | the
30 | MR. POLLOCK: But/ take doesn't get
any less than if they had gone out and struck the

1 plant altogether and completely closed down the
2 service as well.

3 MR. HICKS: It depends. If it is a
4 utility they may be able to function and normally they
5 do function as a utility. It is pretty revolutionary
6 and I would hate to see it introduced in our system.

7 MR. POLLOCK: Well I was just wonder-
8 ing if you had considered this or not?

9 MR. HICKS: No we haven't Mr. Pollock
10 thank you.

11 MR. POLLOCK: Now the next question
12 was with regard to conciliation and you say conciliation
13 boards have unquestionably made a substantial contri-
14 bution to stability in all classes of industry through-
15 out the province. Delays in conciliation proceedings
16 which have sometimes been criticized are much
17 exaggerated and there is no evidence that either party
18 has been unduly prejudiced thereby. Well there's
19 certainly if not evidence there has been grave
20 suspicion that there has been an advantage to one of
21 the parties by the timing that conciliation or the
22 change in timing that conciliation permits, and the
23 best example can be found in the automobile industry
24 I suppose or any industry that has to make a tight
25 production schedule that is you have to bring out your
26 new cars at such and such a time and towards the end
27 of the year when you are retooling you can lay every-
28 body off. Also I suppose as far as climate is con-
29 cerned in many of the industries that involve outside
30 work or even those that involve some inside and it is

1 a question of inconvenience having to picket in the
2 middle of winter in Sudbury, and I suppose also the
3 delay inherent in some conciliation proceedings gives
4 an opportunity for perhaps both parties to prepare but
5 allegedly to give the opportunity for the company to
6 make more elaborate preparations. Those are to me
7 some of the basic criticisms that the union have
8 levelled at delays in conciliation procedures. They
9 don't apply in all cases I agree with that.

10 MR. HICKS: I think you have to look
11 at it again in its broadest perspective and I would
12 suggest that it happens in exceptional cases and not a
13 matter of general rule and again I suggest that their
14 proposition would leave it to them to make the decision
15 primarily rather than to an official of the Department
16 of Labour which is in effect now what takes place
17 because they determine the extent there will be con-
18 ciliation or negotiation.

19 THE COMMISSIONER: Well one question
20 here, would you deny that there isn't sometimes humbug
21 in these negotiations?

22 MR. HICKS: I would be a fool to deny
23 it sir I've seen too much of it.

24 THE COMMISSIONER: On both sides.

25 MR. HICKS: Yes I'll be very frank
26 it has been on both sides.

27 THE COMMISSIONER: Well all I can say
28 it is evidence of the kind of human being we all are.

29 MR. POLLOCK: Now going to the bottom
30 of the left hand part of that page in answer to the

1 question is the system providing for the continuing
2 negotiation of / outstanding differences during the currency
3 of a collective agreement desirable and if so how might
4 such a system best be implemented. I am not
5 interested, I'm interested not only from the stand-
6 point or in fact I'll put it this way. I am not
7 suggesting by that question that you don't have any
8 permanence of any kind of agreement, that you don't
9 have an agreement for one or two years or something
10 like that because as you say one of the things that you
11 are buying is some security or stability. I am saying
12 that perhaps the dialogue that existed during that
13 period of time to discuss some of the matters going to
14 be the subject of negotiation under or in the open.
15 It might lessen the amount of material to be discussed
16 later on. There may be factors that perhaps some
17 general agreement or at least some general disagreement
18 can be established and I'm sure

19 MR. HICKS: That goes on now to quite
20 a degree.

21 MR. POLLOCK: That is right but it
22 is not required.

23 MR. HICKS: But the inference should
24 be avoided that it is negotiation and there's a very
25 subtle distinction between the two when you come to
26 the practicalities but there is continuing dialogue in
27 the industries now.

28 MR. POLLOCK: Then obviously there
29 must be some benefit to it that others could share.

30 MR. CLAWSON: If I may add to what

1 Mr. Pollock said. You said it is not required by law -
2 that is what you mean.

3 MR. POLLOCK: That is right.

4 MR. CLAWSON: Then if parties don't
5 mutually decide to do that there is nothing to prevent
6 the union as often happens to write a provision in the
7 agreement that periodically this should be. It is
8 within the union's power to do that too.

9 MR. POLLOCK: But I wanted to know
10 whether this attitude of saying well all right we have
11 signed our agreement and don't talk to me for two years,
12 is a good attitude.

13 MR. CLAWSON: No it isn't.

14 MR. POLLOCK: Now turning to the
15 question of arbitration grievances and it says no other
16 remedies are needed, there are those cases that you are
17 very familiar with. I am sure during your experience if
18 service and collective agreements once they have been
19 concluded where there is obviously a problem that isn't
20 soluble by making reference to the collective agreement
21 itself and an enlightened person will probably say all
22 right we'll settle that agreement unofficially. Now
23 don't and some people
24 some people/take the attitude and there are unfortun-
25 ately still those individuals around among us that
26 take that approach. It is whatever it says there.

26 MR. HICKS: But again he may pay the
27 price for what he said there.

28 MR. POLLOCK: But that might well be,
29 he may have bargained that away for an extra something.

30 MR. HICKS: Yes a good pro quo.

1 MR. POLLOCK: But if this hadn't been
2 discussed I can see that there ought to be a record kept
3 of those terms that are traded rather closely, and you
4 can't open them up again once you have signed it but
5 those areas that haven't been discussed and those are
6 areas that are not bargained away, ought there to be some
7 general resolution of those matters by some other method
8 than waiting until the contract is opened again. Suppose
9 it boils down to a general appreciation of the Freedman
10 Formula.

11 MR. HICKS: Again the contract is
12 designed to cover everything the parties reasonably
13 expect will occur during its term and they enter it on
14 that basis. In the meantime things have been
15 negotiated out for one reason or another and certainly
16 you wouldn't want any of those to come back in through
17 the back door, and normally I think the type of thing
18 you are talking about would find its way in through the
19 back door because there has been such a morass of stuff
20 put on the bargaining table that it is bound to cover
21 virtually anything that could come up during the term
22 of the contract. This is part of the problem.

23 MR. POLLOCK: I'm trying to conceive
24 of a situation that is not obvious. I mean clearly
25 you can sit down today and draft a collective agreement
26 on behalf of a union that could answer any possible
27 question and no employer would sign it, and the converse
28 is true.

29 MR. HICKS: Well I wouldn't go that
30 far. But let's look at some of the contracts in force,

1 let's look at the rubber industry. They have what they
2 call a severance of word agreement which is ancilliary
3 to the main agreement which provides certain benefits
4 in the event of release from employment due to automation
5 or whatever it, whatever the reason is. They have in
6 addition an SUB plan and you name it and it is there in
7 some fashion and it is negotiated in that fashion. Now
8 that is our point. Now having negotiated in that
9 fashion there should be a second bite of the cherry.

10 MR. POLLOCK: Not in those circum-
11 stances; maybe those unions ought not to and perhaps you
12 could determine from the terms of the collective agree-
13 ment that they ought not to have any

14 MR. HICKS: If they have advocated
15 their right to negotiate a term in the agreement during
16 its regular reopening period they shouldn't have the
17 opportunity of coming back and in effect renegotiating
18 a deal. Again I can't help but repeat this-they are
19 in effect renegotiating a deal for which there has
20 been consideration paid and honoured in terms of the
21 employers obligations.

22 MR. POLLOCK: What is the basic
23 employment situation on what this has predicated as
24 change? There is a significant change in either the
25 method of production or some area of production that
26 no one at the time or known at the time to the employer
27 but he is planning on doing this and he says on good
28 advice "I'm not going to bring this up now because it
29 would only open up another can of worms."

30 MR. HICKS: Well again we are looking

1 probably to the degree here but I would say that
2 broadly it would be unconscionable on the part of any
3 employer to participate in the kind of thing you are
4 talking about, and that is largely why it hasn't
5 happened Mr. Pollock. Forget the terms of the con-
6 tract; there are few employers who would be foolhardy
7 enough to precipitate a crisis by involving employees
8 in a radical or substantial change in their conditions.
9 That is No.1, and believe me and I can say this because
10 I have acted for them, I am not acting for them but
11 they do act on those terms. Secondly as I say the
12 union can look at these things as a matter of
13 principle. They have been going through a change
14 ever since the war and there's never been such a change
15 technologically and they have known of this as much as
16 we have and the smart unions and the intelligent
17 unions and the sophisticated unions have negotiated
18 conditions and this is available to all of them. We
19 say the time to do it is when they negotiate the basic
20 agreement.

21 MR. POLLOCK: Well you are saying
22 for example and let us take this agreement in which
23 you have a plant that provides its own janitorial
24 service that has a classification for a janitor and
25 cleaners and you negotiate a new rate for them.
26 While you are negotiating this new rate you know very
27 well that you already have an arrangement either
28 signed or tentative with some outside company to come
29 in and do your janitorial services for you. You
30 sign that and then--/ I don't want to be dramatic

1 and I don't want to say when the ink is dry--but at
2 that stage you say, "All right thank you very much. We are
3 laying you off because we are sub-contracting that type
4 of work." Now, is what you are saying that the union
5 had a chance to predict that that might occur and that
6 they ought to have protected people from it?

7 MR. HICKS: They have known it as
8 occurring elsewhere and let me say this, that in my
9 experience where this has been attempted one of two
10 things has resulted. Either it hasn't been success-
11 ful and management has had to take a second look at it
12 or alternatively there has been a very substantial
13 price paid for in terms of the renewal of that agree-
14 ment, and it is that type of conduct that catches up.

15 MR. POLLOCK: Simply people have
16 been discharged don't get any benefit of that price.
17 Because they have been out of work as far as the
18 company is concerned for two years if the agreement is
19 a two-year agreement.

20 MR. HICKS: That is possible but
21 again there is not a serious incidence of this in the
22 province at all.

23 MR. POLLOCK: It is not a quality
24 analysis but a qualitative.

25 MR. HICKS: But you must look at the
26 quantity before you seek prescribing a remedy or a
27 sanction because if the quantity isn't sufficient a
28 degree then I suggest the sanction isn't probably
29 necessary.

30 MR. POLLOCK: Or that it won't affect

1 too many people.

2 MR. HICKS: Because it's still
3 within the sphere of free collective bargaining. Your
4 proposition if I may take it out of that sphere and
5 would put a new floor under bargaining, a new floor
6 under managements position or one party's position in
7 the bargaining.

8 MR. POLLOCK: That you have to
9 disclose?

10 MR. HICKS: No that you would have
11 to meet certain minimum standards whatever they were.

12 MR. POLLOCK: And you would have to
13 disclose

14 MR. HICKS: Which may not be
15 feasible at all.

16 MR. WILLS: Well this is the
17 accident before it happens.

18 MR. HICKS: Very rarely management
19 will go in with a preconceived idea of that happening,
20 if at all.

21 MR. POLLOCK: Well if it wasn't
22 rare we would certainly have heard about it but there
23 are those rare occasions where that occurs and that
24 is a sore that festers with some people.

25 MR. HICKS: The union knows the
26 circumstances and they know the vulnerable areas and
27 they can negotiate as to consequences.

28 MR. WOXMAN: I would like to make a
29 comment with regard to that, please. I think this
30 opened up another bag of worms too on the basis that

1 an agreement could be negotiated that is completely
2 outside the sphere of technological improvement or
3 change and could be strictly an economic factor and in
4 this regard the employer could have a two-year contract
5 and due to the outside influence of other extenuating
6 circumstances and I think Mr. Hicks referred here
7 earlier to some rather exorbitant claims and settle-
8 ments, and we have a specific case where a two-year
9 contract was attempted to be reopened after eight
10 months because the union felt that the terms of
11 settlement that they agreed to at that time were not
12 compatible with today's scheme. That is with today's
13 payments and in line with other considerations. To
14 me the monetary issue Mr. Hicks seems to be a con-
15 siderable portion of this element rather than the
16 technological or jobbing out. I think we all deal
17 extensively with jobbing out and the monetary element
18 due to this pyramiding value seems to be a very
19 dominant factor on the area that you are talking
20 about.

21 MR. POLLOCK: Well the only way you
22 can measure this feeling of frustration I suppose is
23 the attitude today in some unions to say all right if
24 we are not going to be able to strike during the
25 currency of an agreement and something like this can
26 come up and we can't do anything about it then we are
27 going to shorten our period of agreement to a one-year
28 agreement.

29 MR. HICKS: Well this happened in
30 Detroit because it couldn't happen here.

1 THE COMMISSIONER: Yes but it doesn't
2 fit in very well with your conception of stability.

3 MR. HICKS: Well it depends on con-
4 ditions sir you can't forecast ahead. Often you
5 can't see ahead that well but let me illustrate in
6 answer to your question Mr. Pollock. There was a
7 recent strike in Detroit where the union had the
8 right to strike over a safety issue or over a job
9 standard, a new rate. They came into management
10 with a list of fifteen demands and they said we want
11 satisfaction in all fifteen only three of which were
12 strike issues. They went out on strike and they
13 were out for seven weeks until they were satisfied
14 that management wouldn't deal on those issues on which
15 they couldn't strike. Now the purpose of their
16 strike was unquestionably ulterior. They weren't
17 interested in the two job standards they were
18 interested only with what else they could exact
19 again through the back door I'm talking about now.
20 This is our problem when we start opening it up. In
21 any fashion it is susceptible to exploitation.

22 MR. POLLOCK: That is right and
23 what do you do in the circumstances that were pointed
24 out to us I think in Windsor where you have grievances,
25 safety grievances for example pursuant to a term in
26 the agreement say you can grieve or you don't have to
27 work in an unsafe condition. Now you have a fellow
28 working and he makes a grievance, perhaps the company
29 says all right we will do something about it and they
30 don't do anything about it and they wait and nothing

1 is done and they agree that they are wrong. Let us
2 assume that the thing is clearly unsafe and they don't
3 do anything about it. You can't strike.

4 MR. HICKS: He doesn't have to work
5 on the job either does he?

6 MR. POLLOCK: But he can be fired.

7 MR. HICKS: No he can't, not under
8 the condition you are stating-not where there is an
9 agreement that it is unsafe or albeit there are con-
10 tract provisions to the effect that they don't have
11 to work in unsafe conditions.

12 MR. POLLOCK: Unless the foreman
13 says I think it safe and I order you to work and if
14 you refuse that it is not a question of the agreement
15 it is a question of disobeying a direct order.

16 MR. HICKS: Then let them negotiate
17 a provision in their contract. This isn't anything
18 new.

19 MR. POLLOCK: No but that thing
20 exists and it is another cause for frustration.

21 MR. HICKS: Well surely they wouldn't
22 close the whole plant down because one man maybe
23 improperly alleges it is unsafe.

24 MR. POLLOCK: I'm not suggesting you
25 close the whole plant down.

26 MR. HICKS: We could refer you to
27 the strike at Hydro where they were out for five weeks
28 where it was proven conclusively that there wasn't a
29 safety issue at all.

30 MR. POLLOCK: Well I'm not quarrel-

1 ling with the fact that safety is a very convenient
2 smoke screen.

3 MR. HICKS: Or gimmick.

4 MR. POLLOCK: All right gimmick.

5 I think it is apparent abuse because it is a
6 question of judgment and it is a question of value.
7 Is it safe or isn't it safe. All right there's room
8 for disagreement but at that stage where the company
9 perhaps will agree that there are some unsafe condi-
10 tions and that we are going to rectify them but they
11 don't do it and you can wait and go through the
12 arbitration procedure and after a couple of months
13 they arrive at a conclusion saying you must do it.
14 At that stage the company says I will do it but they
15 have the benefit of not doing it for a few months.

16 MR. HICKS: Well I would like to
17 know of one case and I'm not familiar with construc-
18 tion, I read what there is in the paper but I'm not
19 close to it. I would like to know of one case in
20 the manufacturing or service industry where an employee
21 has been forced to work against what are obvious
22 unsafe conditions. Now as I say again if these risks
23 are matters of concern let them be negotiated. We as
24 management face all kinds of frustrations in the
25 administration agreement. I have clients who would
26 like to open their agreements monthly because they are
27 running into opposition here in terms of performance,
28 in terms of the ability to sign, in terms of the
29 ability to create more appropriate efficiency standards
30 and so on. But we have to live with this thing and we

1 say that the other side should live with it equally.

2 THE COMMISSIONER: Do you think that
3 these matters that are provided for by settlement and
4 arbitration could be dealt with in some situations by
5 immediate action on the part of an officer say of the
6 tribunal who will go to the plant. For instance
7 there was a complaint that there is some oil on the
8 floor. Well that may or may not be dangerous but it
9 seems to me to be rather absurd that the delay in that
10 becomes a matter to be blown up into formal arbitration.
11 Now I don't want to question jurisdiction too much but
12 there are cases in some states in which an officer
13 whatever he may be called would go there and use his
14 own judgment about the danger there and settle it.
15 Now that would apply to minor questions I agree, and
16 it might be a question to determine whether a matter
17 is a minor or major question but the tendency to meet
18 these things at the outset and before they become of
19 such a nature as to cause a dissatisfaction and arouse
20 resentment seems to me to be a good measure if you
21 could provide for it.

22 MR. HICKS: Fundamentally sir we are
23 back to the question of attitude and reasonable
24 attitude which one really can't legislate for.

25 THE COMMISSIONER: I'm not talking
26 about legislation I'm talking about having a man on
27 the spot. I understand that there are in this
28 province many, many arbitrations that haven't yet
29 been reached on complaints that are probably grievances
30 under the agreement. But you can't get anybody to

1 sit on them. Well why not try to have competent
2 commissioners who in small matters such as plant
3 matters could settle plant matters.

4 MR. HICKS: Normally, if^{we}/are given
5 the right attitude and responsibility those matters
6 are settled and 95% of them are settled.

7 THE COMMISSIONER: Well they may be
8 but according to what we hear some of them are not and
9 why and I suppose the reason you have so many unsettled
10 grievances today is the absence of agreeable arbitrators.

11 MR. HICKS: Well we have a peculiar
12 problem now sir, as you know judiciary are no longer
13 competent or legally competent to sit and this has
14 created a problem unquestionably.

15 THE COMMISSIONER: Well to have
16 someone to act, and a competent man I assume that can
17 act. Why couldn't he go to the plant and say clean
18 this up or something of that sort. You get into the
19 attitude of putting everything in this formal
20 apparatus.

21 MR. HICKS: Well whether or not
22 there should be leaning on more and more outsiders,
23 surely the parties are going to come to the maturity
24 where they can settle these things themselves.

25 THE COMMISSIONER: But you're angry
26 for outsiders when you talk about county court judges
27 and arbitrators.

28 MR. HICKS: At that level sir yes.

29 THE COMMISSIONER: But this is the
30 same level.

1 MR. HICKS: But this is the final
2 appeal.

3 THE COMMISSIONER: This is the same
4 level except that it doesn't allow the source or
5 cause of the agreement to go on indefinitely and
6 generate hostility.

7 MR. WOXMAN: I may be out of order
8 to refer to this because this body already exists and
9 I think the implication was that we were dealing with
10 safety. If an article becomes completely untenable
11 either between two parties it is my understanding
12 and I did make reference here to the balance of the
13 committee, it is my understanding that we have in
14 existence today a complete and separate body that we
15 can appeal to and get a separate judgment on and we
16 do and that is the Department of Labour through the
17 Workmen's Compensation Safety Act. These people
18 are in our plant all of the time and I'm sure they're
19 in everybody's plant and quite frankly they can stop
20 an operation at any time they deem an article or
21 operation to be unsafe. Now usually it doesn't get
22 into the grievance procedure Mr. Hicks because normally
23 these things are attended to quite apart and I would
24 wholly agree with Mr. Hicks that these kinds of things
25 are arbitrated and unfortunately there are circum-
26 stances where something gets into a shade of grey.
27 I was thinking of the textile industry where a noise
28 level has become a very severe problem and I would
29 imagine in that particular case that some of these
30 industries would tempt to baffle off this type of

1 complaint if they knew how to handle them. I have
2 personally been in their plants and I have seen them
3 operate. Well the question is how soon can you do
4 this etc, etc. But I would like to make the obser-
5 vation that we do the mechanism today.

6 THE COMMISSIONER: Then why isn't
7 it used?

8 MR. WOXMAN: It is used sir
9 absolutely, this is the thing I want to make clear.

10 THE COMMISSIONER: Well I am pro-
11 ceeding on what has been told us.

12 ---Luncheon adjournment.
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1 ---On Resuming at 2:00 P.M.

2 MR. POLLOCK: It has occurred to
3 us that some of these questions, the organization
4 may not have had an opportunity to discuss these
5 things so we would appreciate whoever could answer
6 the question, if it is one that doesn't speak for
7 the policy of the Association he could certainly
8 point that out to us and we would be obliged for
9 your experience as individuals as well, and if you
10 can speak for the Association so much the better.
11 If not we want to free you from any fetters of
12 conflict of interest.

13 MR. HICKS: Thank you Mr. Pollock.

14 MR. POLLOCK: Now turning to some
15 questions that you raised extensively - Pages 13 on-
16 wards in dealing with certification procedures,
17 although these are probably beyond the terms of
18 reference some of the matters that you raised
19 probably could create the background of which this
20 Commission arises. There seems to be some concern
21 as to the methods of certification and whether or
22 not they express the will of the employees, that is
23 employee opposition. Now the thread running through
24 these things and I don't say that this is their
25 purpose at all but in days gone by there has been
26 some altruistic concern "with employees rights" I
27 suppose in the sense that if they aren't organized
28 so much the better and we will help them oppose
29 organization. I don't get that from this approach
30 but it seems that a lot of the concern indicates

1 some employers may still have hidden objectives and
2 opposition to unionization.

3 MR. HICKS: We don't represent that
4 point of view I want to be emphatic about that. We
5 are not here to represent or reflect that point of
6 view.

7 MR. POLLOCK: Good. There are
8 some problems that are raised here that suggest an
9 uncertainty on the part of employers when dealing
10 with a union that has been certified.

11 MR. HICKS: It is a lack of
12 confidence in the certification result that is of
13 concern.

14 MR. POLLOCK: Why doesn't the
15 certificate taken on the basis of either representa-
16 tion vote or otherwise when the board itself which is
17 charged with this responsibility, why doesn't that in
18 itself satisfy the employer?

19 MR. HICKS: Well normally I would
20 say almost without exception where there has been a
21 vote there is satisfaction. There is bound to be
22 because it is a secret ballot, and it must be taken
23 as factual. But the techniques, the gimmicks and the
24 pressures that are brought to bear upon employees in
25 gaining their signatures to union cards in our view
26 lead to abuse of a system, the entertainment of
27 employees at the local pub, visiting with them in
28 their homes night after night; this can go on and on
29 until their resistance has reached such a low ebb
30 that they will sign anything to get rid of whoever

1 happens to be at the door.

2 MR. POLLOCK: Of course in some
3 cases that is an explanation that is made to an
4 employer and I don't want to call it his pride but
5 who is wounded.

6 MR. HICKS: Yes of course that
7 certainly enters into it if you are going to dissipate
8 and dissolve those kind of concerns then we say there
9 should be a secret ballot of vote. You see take
10 for example some recent organizational campaigns here
11 in the city. A group of a hundred to a hundred and
12 fifty Italian workers in a given plant and I'm sorry
13 I don't have the plant at my fingertips but they are
14 involved in making drapes and the union ran what they
15 represented as a radio survey of opinion and it
16 involved the answers to certain questions pertaining
17 to the programs of a station which their preferences
18 were and then to win a prize you were to sign your
19 name and address. Now this was the device they used
20 to obtain the residences or addresses of the
21 individuals in that unit. There was no spontaneous
22 interest in the union in that unit. They know^{where}/they
23 can join a union and all they have to do is look up
24 the yellow pages and there are all kinds of them
25 listed but in another case they went to the parking
26 lot and took license numbers off the cars parked in
27 the employees parking lot. Then went over to Queen's
28 Park and then for a quarter as you know you can get
29 anybody's name related to that license plate, and
30 they utilized that to go out and conduct a campaign.

1 Now if there is a sincere interest on the part of
2 the individual employees or a group wishing unionization
3 that is their business, but our concern is so much of
4 the current activities involving the organization of
5 new unions stems from outside or professional interest
6 rather than internal or sincere interest for union
7 representation. We say secondly that with these
8 gimmicks and so on that the cards should not be taken
9 at their face value. They require a minimum pay-
10 ment of \$1.00. That \$1.00 has been in effect since
11 1948.

12 MR. POLLOCK: Is that one or three?

13 MR. HICKS: It's one in Ontario
14 federally it is three and in Quebec it is \$1.50. In
15 terms of 1948 dollars that's about .35¢ or .40¢ now
16 and I suggest that that doesn't represent a substan-
17 tial interest in an obligation to a new union. We
18 say that the time limits that are imposed on the
19 employees in expressing their opposition formally
20 before the board are so narrow, given five days here
21 in the city and a maximum of seven or eight days in
22 Fort William, they are so limited and so narrow that
23 they don't permit of employees getting together and
24 formulating an opposition with or without independent
25 counsel. It is again beyond and outside their
26 experience and all of a sudden something happens and
27 as we urge in the brief the Eaton campaign went on
28 for three or four years for example and it was before
29 the Board some seven or eight years ago. It is not
30 uncommon and I can cite a case in Brantford where the

1 union made three different applications for certifi-
2 cation and lost on the vote three times. All of a
3 sudden there's an application, a notice posted in the
4 plant and employees have very few days to settle them-
5 selves by way of opposition. We don't think there is
6 adequate or fair time for them to oppose it if they
7 are opposed to it. We say and thirdly the result of
8 employee opposition engenders obviously friction and
9 discord and if there is one thing management is
10 interested in it is elimination of discord in the work
11 force. If we can minimize that we should.

12 THE COMMISSIONER: How does that
13 arise?

14 MR. HICKS: It arises out of the
15 contest sir between the non-union employee who doesn't
16 want a union and who resents the fact of a union coming
17 in and he resents the fact that he hasn't got time to
18 express his opposition before the labour board.
19 Secondly we carry that a step forward or further and
20 let us take a case in North Bay or Ottawa or Renfrew.
21 They are expected to come down, either be represented
22 by counsel and appear with counsel to give evidence,
23 direct evidence under oath, as to the status of their
24 opposition. Now this again puts them to expense
25 that is needless expense because the simple answer
26 that reconciles all these if you will, all of these
27 defects in the administration of the act is a vote.
28 If there is a vote there is no conflict because the
29 employee knows he's going to have a chance to mark a
30 ballot yes or no. Now we come however to another

1 alternative which wasn't mentioned in our brief and
2 which concerns us. Where you have two unions either
3 there is an incumbent union and a raiding union trying
4 to take over the jurisdiction or you have an un-
5 organized union and two or three or four unions
6 attempting to organize them and we have a situation
7 in Kingston at DuPont where there are three organiza-
8 tions involved, the non-workers, the chemical workers
9 and the textile worker. Now there may be a vote for
10 two or more unions, votes on the ballot but no room
11 for unions. So the act presupposes that the employees
12 should have a union whether or not they wish a union
13 there they are all expected to vote.

14 MR. POLLOCK: And if they don't vote
15 it is counted against them.

16 MR. HICKS: That is right but I
17 suggest that there should be on that ballot a place
18 for no union.

19 MR. POLLOCK: You mean one, two,
20 three and no union.

21 MR. HICKS: Right and everybody's
22 needs have been met and there is no room for quarrel.
23 We sit down and bargain and the union has been certi-
24 fied on that basis and there is no avenue left for
25 the employer or the employees to question the bona
26 fides or the validity of the union certificate.

27 THE COMMISSIONER: How would the
28 vote negatively help any more than a vote positively
29 because if you have a division in your view you have
30 a hostility?

1 MR. HICKS: There is greater
2 hostility as it now stands in our judgment because
3 they don't have the opportunity of a vote.

4 THE COMMISSIONER: ^{don't} But/you think
5 that those who want a union are just as militant
6 and vigorous in their action as those who do not?

7 MR. HICKS: Ordinarily I would say
8 more so but their opportunity has taken place when
9 they signed them up.

10 THE COMMISSIONER: But in the case
11 of the loss of the majority against a union you have
12 a greater or a more disagreeable relation in the
13 union than in a contrary situation.

14 MR. HICKS: We suggest not sir
15 because if there is anything that should reconcile
16 the dispute it should be the fact of a secret ballot
17 vote.

18 THE COMMISSIONER: Yes but that
19 isn't going to influence people who are in dead in
20 favour of a union.

21 MR. HICKS: At least they know that
22 the result is a legitimate result. They know it is a
23 bona fide legitimate result.

24 THE COMMISSIONER: On the other
25 hand I have heard-and take contractors. The estab-
26 lished contractors are unionized are they not?

27 MR. HICKS: Are contractors in the
28 construction business, yes.

29 THE COMMISSIONER: And I understand
30 and I think probably it is so that there are a great

1 many people who like to get into the contracting
2 business for a short time and they don't want to be
3 bothered with anybody else and it is questionable,
4 the quality of the contribution which they make towards
5 construction, but they are the people who don't want
6 to be worried by a union and they are the people who
7 bring in the class of men whom you have referred to,
8 people who are not familiar with the conditions around
9 here.

10 MR. HICKS: I wouldn't isolate it
11 to just the construction industry. I am following
12 entirely what you say and that is why there is a
13 special section added to the construction industry as
14 you know in the act, to accelerate and expedite their
15 matters but I can speak from experience in terms of
16 industry at large where time and again we have been
17 concerned and the employees have expressed dismay with
18 the fact that they have been told literally by the
19 union sign a card and there will be a vote.

20 THE COMMISSIONER: Yes but it really
21 goes to this question, perhaps unconsciously but I
22 think you do express an opinion against unionism.

23 MR. HICKS: It may be so interpreted
24 but frankly no.

25 THE COMMISSIONER: If the union is
26 desirable it is desirable because it is with favourable
27 results.

28 MR. HICKS: It is desirable if the
29 employees in a bona fide and sincere sense want it.
30 Now if their arm has been twisted, if they have been

1 cajoled with promises and I mean promises impossible
2 of performance but if they have been cajoled into
3 signing a card and frankly they're not too sure of what
4 they are doing on occasion.

5 THE COMMISSIONER: But the question
6 after all is, is the unionization beneficial for them
7 and what you're saying and you're really are taking the
8 position as the protector of the workman.

9 MR. HICKS: No sir, we are saying
10 that the legislation should be so fair that we don't
11 have to protect his interest, that the worker's interests
12 are completely protected by the legislation which is
13 not defective.

14 THE COMMISSIONER: But you mentioned
15 that the interests of your employer was this that he
16 didn't want internal friction and it seems to me that
17 no matter how you go there's going to be internal
18 friction if you have any group at all desiring and the
19 other part of the group opposing.

20 MR. HICKS: Yes but there is less
21 cause for friction if the result is in the form of a
22 ballot. This is our position.

23 THE COMMISSIONER: But on the other
24 hand the argument for unions is pretty strong. They
25 say that whatever you get that is beneficial it has
26 come through us which is a pretty powerful argument I
27 think. That is from the standpoint of the men them-
28 selves.

29 MR. POLLOCK: I suppose that argument
30 is best exemplified in Hamilton in the Steel Company

1 and the organization across the road at Dofasco. One
2 is unionized and the other is not unionized and I don't
3 think there is very much difference between the terms
4 and conditions of employment in either one.

5 MR. HICKS: I think there is one
6 possibly fundamental difference, there is a profit-
7 sharing plan but they don't have a pension plan.

8 MR. CLAWSON: With regard to job
9 security I don't know where that would come in.

10 MR. POLLOCK: I think there is more
11 job security at the Steel Company of Canada than there
12 is at Dominion Foundries and Steel.

13 MR. CLAWSON: I wouldn't say so.

14 MR. POLLOCK: They have grievance
15 procedure and all that?

16 MR. CLAWSON: Oh yes.

17 MR. HICKS: Don't forget they haven't
18 had a union.

19 THE COMMISSIONER: How many companies
20 in Canada have the arrangement that Dominion have?

21 MR. HICKS: Relatively few in the
22 large industries.

23 MR. CLAWSON: Is there's a suggestion
24 here that unionism is generally desirable and their
25 employees should not be consulted?

26 MR. POLLOCK: No, no, I didn't say
27 that.

28 THE COMMISSIONER: All I am concerned
29 with is trying to find out the basis of your concern
30 to them.

1 MR. HICKS: Well let me carry it a
2 step further sir. The basis of our concern predomin-
3 antly is that when we sit down to bargain and again I'm
4 talking about the stranger off the street in their
5 terms and this is a guy we've never seen before, he has
6 never been introduced to us but he may come from Toronto
7 or from Pittsburgh.

8 THE COMMISSIONER: But you are
9 sophisticated.

10 MR. HICKS: I may not be at the table
11 sir. And we say at that stage that there will be more
12 sincerity in the bargaining if all adults have been
13 dissipated and dissolved of the fact that there is a
14 secret ballot which everybody has an opportunity to
15 express his position privately on. Now it's very
16 interesting and I would ask you to look again at your
17 report Mr. Pollock, there's a very curious statistic
18 referred to on page 257 of the report. Of the 697
19 single unit vote and that is where there is a yes/no
20 ballot and this is where the unions have come in
21 presumably confident of their position or they wouldn't
22 have applied, they lost in 62% of those votes sir, that
23 is 62%. Now as I say the practice nowadays is for
24 major unions in fact unions generally not like ten
25 years ago, they don't make an application to the board
26 unless they're confident of success. They don't like
27 to be unsuccessful, it is bad for their image.

28 MR. POLLOCK: Where are those figures?

29 MR. HICKS: It is page 257. Of a
30 1,074 votes, I'm sorry, of 697 secret union votes the

1 unions won 266 or 38%.

2 THE COMMISSIONER: This is on the
3 vote of application for certification?

4 MR. HICKS: Yes and they must have
5 between 45 and 55%. Now I say that demonstrates the
6 point we are seeking to make despite the fact
7 that unions were confident of the result favourable to
8 them and in a vast majority of the cases they didn't
9 succeed, why, because the employee was given a chance
10 to declare himself secretly by ballot. Now our
11 concern is that again and I can't overly stress this,
12 there is no opposition on the part of this opposition
13 to this board to bona fide trade unionism. But when
14 we sit down to bargain we want everybody satisfied as
15 best as can be accomplished that the union does with
16 the validity represent / employees and we say the only
17 objective criterion is a secret ballot, which removes
18 it from the pressures of both management and union.

19 MR. POLLOCK: Then in all cases a
20 secret ballot ought to be there. Now would you be
21 content with a simple majority of those voting?

22 MR. HICKS: No and there are two or
23 three very valid reasons. Firstly, unlike the
24 situation where a simple majority prevails they never
25 have to come back to renew their mandate unless it is
26 contested by outsiders. They don't face annual or
27 biannual or quinquennial or regular elections for a
28 new mandate. Now secondly Mr. Pollock, when they
29 are certified they represent all the employees. They
30 represent all of them, and they speak for all of them

1 and they bind and commit all of them and we say in
2 those circumstances it should be clear majority of
3 the eligibles and not simply a simple majority.

4 MR. POLLOCK: But all of them are
5 entitled to vote. If they have any feeling to
6 express in opposition then they certainly will express
7 it. If they have a feeling to express in favour of
8 it then they will express it but there ^{are} / other people
9 that couldn't care less because they don't vote.

10 MR. HICKS: It may not be a care
11 less attitude, it may be a matter of the guy who
12 doesn't want to be seen going in to vote and you'd
13 be surprised how often this can happen.

14 MR. POLLOCK: But the milk toasts
15 are the ones who say give us the ballot.

16 MR. WILLS: Perhaps it might have
17 something to do with time Your Worship. A person
18 could often be called at a time when he's taking his
19 wife shopping or taking children to a hockey game that
20 he has to go out and vote.

21 MR. POLLOCK: Well let them have
22 the vote at the plant gate over two or three days.

23 MR. WILLS: Well that is equal
24 opportunity.

25 MR. POLLOCK: So that everybody
26 goes into the plant and takes one of the ballot boxes
27 and casts a ballot. Then those who want to vote vote
28 and those who don't want to vote don't get a chance
29 to make their negative view felt unless they want to
30 vote.

1 MR. HICKS: Well I think it is con-
2 sistent with them representing only those whom they
3 support but if they are representing them largely then
4 it should be a clear majority.

5 MR. CLAWSON: The consequence of the
6 flow from certification are much more serious than they
7 are a political election.

8 MR. POLLOCK: Serious to who?

9 MR. CLAWSON: To those who voted
10 against it. There is no organized opposition for
11 instance. They may be saddled with a compulsory
12 membership provision so it is important I think, I mean
13 it's a parallel to the general political system, I don't
14 think it's a sound one, I think it's a majority of the
15 people effected should be in favour of a union.

16 MR. POLLOCK: If the majority of the
17 people effected feel strongly enough to vote.

18 MR. CLAWSON: No whether or not they
19 do.

20 MR. POLLOCK: Well it doesn't cost
21 them anything, however I understand your position on it.
22 The brief to the relation on other factors contributing
23 to labour disputes on page 13. I have a couple of them
24 marked here and the third one "there's evidence
25 recently that a younger and more militant breed of
26 union leader is coming to the fore. Many of these
27 have had little experience with the hardships and
28 general futility of strikes, also they have emerged
29 during an unprecedented buoyant economy." What
30 evidence do you have of that. I have the feeling like

1 you do that that is true but I wonder if you had some
2 evidence that I don't have?

3 MR. CLAWSON: I could give more
4 direct evidence except that I do not want to use names.
5 There are certain unions who have now become rather
6 large and the leaders of these unions have traditionally
7 had a great deal of influence with the membership due
8 to their historical association. They are the people
9 who started the unions and they went through the
10 militant stages. These same people for a number of
11 reasons partly because they were heads of large
12 administrative units and they had very heavy administra-
13 tive responsibilities and they cannot get to the union
14 meetings. When you have a union consisting of 90,000
15 employees you can't go to every local meeting. They
16 are involved in others and there's a greater demand
17 all the time for union people to sit on government
18 boards of various kinds, and committees. Finally
19 and I think this is the most of all, with the growth
20 in the union and the fact that these gentlemen cannot
21 be on deck all the time the younger element have never
22 heard of them, they are a name and in fact they are
23 just as remote from the average employee as the
24 president of a corporation. In other words one of
25 the reasons unions were formed as corporations became
26 large was that it was not the personal touch and this
27 is what was happening and I could cite two or three
28 specific examples where the name of a certain leader
29 was magic, if he came before a membership meeting to
30 discuss a certain point or problem, and now he carries

1 little or no weight mainly because the average age of
2 the work force is going down.

3 THE COMMISSIONER: The average age
4 is what?

5 MR. CLAWSON: The average age is
6 going down. It's the number of people or employees
7 in our plant, there are a number of them who have never
8 heard of the heads of our unions except in a very remote
9 sort of way which was not the case ten years ago.

10 MR. POLLOCK: And they don't want to
11 be told about it either because they say that is
12 history.

13 MR. CLAWSON: Well they consider
14 them too conservative in many respects.

15 THE COMMISSIONER: But that very
16 fact itself is due to something else, the fact that
17 they are intolerant of conservatism. They're being
18 introduced now to all sorts of ideas which before were
19 not accessible to them and everybody is hammering on
20 the rights and democracy and one thing and another and
21 there is disillusionment in religion and other matters.
22 So that it seems to me the factors in society leading
23 to that are not very well hidden.

24 MR. POLLOCK: But in that regard as
25 long and I don't know how that squares with the
26 proposition that unions ought to be more democratic,
27 because the more democratic unions are the more this
28 problem comes up, and I don't know whether this is a
29 comment that is made in futility in saying "oh dear
30 this thing is upon us what do we do" if it is upon us

1 what can we do?

2 MR. HICKS: Well fundamentally we
3 are prepared to rely on the judgment of the average
4 guy, given the opportunity to express himself. We
5 think that given that then a lot of these problems
6 will eventually and we've gone through a special
7 period as we all I think recognize an abnormal period.

8 THE COMMISSIONER: How many of these
9 "guys", what percent do they constitute of the union
10 body?

11 MR. HICKS: Our view is still a
12 majority.

13 MR. CLAWSON: Well we have covered
14 this item 3 and we are not saying that any one of
15 these factors is a problem, it is just a number of
16 things.

17 MR. HICKS: Well in answer to your
18 question we've tried to develop what we felt were some
19 of the problems.

20 MR. POLLOCK: Yes and I will agree
21 with you that it is a problem and I wondered if you
22 had any

23 MR. HICKS: There is no panacea.

24 MR. CLAWSON: Some of the union
25 leaders themselves are just as much concerned with
26 item 3 as we are.

27 THE COMMISSIONER: Well of course
28 I suppose the filling of office itself creates an
29 interest that is becoming significant.

30 MR. POLLOCK: The next point No.4

1 talks about "huge monolithic international unions in the
2 CLC have established and identified with jurisdiction
3 of work which by mutual agreement virtually eliminate
4 any competition in their respective jurisdictions
5 among organized or unorganized." I am sure that the
6 CLC would be very happy if that were so.

7 MR. HICKS: Well it is a matter of
8 record that they have their jurisdictional committee,
9 they literally allocate the plant for organization and
10 they literally, they transfer bargaining rights from
11 one union to another and they decide virtually what
12 union is qualified to organize a given union.

13 MR. POLLOCK: Well that may be true
14 in some areas. The example you gave of DuPont has
15 three competing unions.

16 MR. HICKS: That's right and who is
17 going to make the decision.

18 MR. POLLOCK: I imagine the employee
19 on a vote. All three of them are trying to organize.

20 MR. HICKS: The CLC will make a
21 decision as to two of them because two of them are
22 members of the congress and the mine workers isn't.
23 The congress will do one of two things, they will
24 either assign ^{it} /to the chemical unions or the textile
25 workers or they will charter a direct local and they
26 will ultimately reassign it and transfer it to one of
27 the two.

28 MR. POLLOCK: Then there is a mis-
29 understanding of your terms. I believe you had
30 indicated that the jurisdiction that the unions were

1 allegated to particular jurisdictions. The thing that
2 came to my mind I think the United Auto Workers are
3 certified for a salt mine out in Windsor.

4 MR. HICKS: But that is tough to do
5 now because the CLC would move in. They had
6 inherited that before this as I understand it this
7 function of the CLC came into play that currently
8 certainly if there is any conflict as to which union
9 has jurisdiction it is for the CLC to decide.

10 MR. POLLOCK: If they can.

11 MR. HICKS: Yes within their con-
12 stitution.

13 MR. POLLOCK: In point No.7 right
14 at the bottom of that point you suggest that there is
15 also lacking a degree of authority on the part of
16 union leadership which is necessary to command the
17 respect of the constituents not so much in terms of
18 union accomplishments or objectives but in terms of
19 the disciplines which are fundamental to the function
20 of the responsible organization. And you suggest "on
21 the contrary we find for example a union reimbursing
22 its members for loss of wages incurred as a result of
23 disciplinary suspensions which were sustained at
24 arbitration on the grounds that they formented or
25 participated in an unlawful strike." Now has that
26 occurred?

27 MR. HICKS: Yes sir. There's a
28 gentleman sitting at this table who was involved in
29 that, that is his company. I believe the next
30 sentence

1 MR. POLLOCK: "In a recent strike
2 which was called unlawful by the labour relations
3 board the union further flaunted authority by provid-
4 ing a daily subsidy to employees on strike."

5 MR. HICKS: That also happens. There
6 is this further flaunting if you will of authority.

7 MR. POLLOCK: But this came after
8 the declaration of labour relations board did it, the
9 payment of the subsidy?

10 MR. HICKS: Yes sir I think it did.

11 MR. POLLOCK: But there's no doubt
12 of the first one?

13 MR. HICKS: There is no doubt about
14 the first one no but I'm not sure of the second.

15 MR. POLLOCK: What union was that?

16 MR. HICKS: I think it was the
17 United Electrical Workers and the Steel Workers.

18 MR. POLLOCK: Where?

19 MR. HICKS: In Hamilton. We will
20 furnish the names privately because we don't want to
21 make an issue of these things for the Press. The
22 second one was in construction union, the iron workers.

23 THE COMMISSIONER: Would you suggest
24 anything to deal with the payment of money for any
25 purposes by the union? You see in some cases that
26 payment, certain payments are prohibited by a union
27 to its members. Strike benefit is prohibited in
28 some sections of Australia.

29 MR. HICKS: I didn't know that sir
30 frankly. We hadn't thought in those terms, we were

1 thinking of their lack of responsibility in recognizing
2 the disciplines that are necessary for the positive
3 functioning of any organization. Again I don't know
4 whether that could be policed adequately. But these
5 things come to our attention normally second-hand as
6 you can imagine, they are not something that are
7 broadcast at large.

8 MR. STEWART: In the second instance
9 here where the strike was declared unlawful by the
10 board, the union didn't take issue in that case but
11 there were strike benefits and there were welfare
12 payments made to every member of the union who was on
13 strike but they weren't strike benefits.

14 MR. HICKS: It's a matter of
15 semantics.

16 THE COMMISSIONER: Well that is a
17 trend that is also not unknown in Australia, welfare.
18 They render an annual account for the distribution of
19 their money and they can't show that it was done in
20 relief of a strike so it was treated sometimes that
21 way.

22 MR. WOXMAN: To return to item 3 I
23 would like to comment and I would think we would be
24 remiss in avoiding the comment regarding the historical
25 background of certain types and kinds of union people
26 that had responsibilities related to their pension
27 benefits and I think this last 365 days plus is due
28 to the advent of a pensioning program coming into
29 different routes where we also have private pension
30 programs and then the introduction of the government

1 program and then the promise that certain of these
2 pension funds were going to be released and given back
3 to the employees and such things as that and it has
4 possibly done a lot to ferment a lot of dissatisfaction.
5 Now in dealing with the younger people, in our
6 particular industry we have some 20 to 40% or 38% and
7 they have a long length of service and I'm talking
8 about ten to twenty years. The four to six year
9 employee has no regard for a pension program and who
10 other than the employer can stand and try to present
11 a case for the older employer who has a vested
12 interest in this and this became a strike issue and I
13 would speak very directly. You asked about a direct
14 comment and here again I think there was a condition
15 where the younger people either had a disregard or a
16 lack of respect for the heritage if you please, that
17 the prior investment and the younger people as much
18 as indicated well fine we're going to rely on this
19 pension program and we're not interested in any prior
20 pension program and so on and so forth. I think the
21 pension program, Mr. Hicks, had a very strong bearing
22 on a tremendous amount of dissatisfaction that we
23 encountered during this last year and a half.

24 MR. HICKS: I think Mr. Woxman
25 was aggravated also by saying the female content of
26 any bargaining unit; we had a fair percentage of
27 employees in the female category who don't regard
28 jobs normally as a career and therefore are dis-
29 interested in the long term protection aspect of a
30 pension program. So they are opposed like the more

1 junior service employee.

2 MR. POLLOCK: I think possibly
3 pension is the vehicle that makes obvious this disparity
4 between the young and the old, and the sexes.

5 THE COMMISSIONER: Well I suppose
6 when you consider today the difficulty in the way a
7 young man starting a home, where he has to pay so much
8 for a builder, to obtain a home in the first place,
9 he isn't able to do very much in the way of looking
10 to the future and really it almost looks as if you
11 paid the highest salaries at the wrong end.

12 MR. WILLS: I think sir the point
13 the
14 in the make up of/employee group has a great bearing
15 on a number of things. You discussed earlier this
16 morning the matter of rejection of an agreement agreed
17 upon by the bargaining committee and the employer.
18 The bargaining committee in most cases is composed of
19 males. It could well be that you would get a
20 rejection of an agreement in an operation where there
21 is a large percentage of female employees, not
22 necessarily for the package as a whole and it has
23 happened in our case that when it went back to the
24 membership it was rejected because of the infusion
25 of about 50% females. So when the package came back
26 rejected we merely took cents from here and put cents
27 from there and the total amount remained the same but
28 the make up was different. So this has a considerable
29 bearing and it is probably a factor of the bargaining
30 committee of the union not being completely aware of
the make up of the people they are dealing with.

1 MR. POLLOCK: And too I suppose it
2 creates a problems in those areas where peoples wages
3 below a certain level of skill had been tied to a more
4 highly skilled person and to bring these people up you
5 have to inject those top people or the reference
6 people into the clouds and it requires some adjustment
7 as far as that type of contract negotiation is con-
8 cerned. Turning now to part 4 Perspective: The Strike
9 in Collective Bargaining, the first question I would
10 like to ask is what techniques do you think ought to
11 be available and I appreciate your answer in great
12 detail in your brief, and I would like a resume if
13 possible. What techniques ought to be available to
14 the striking employees to pursue their strikes and
15 what techniques ought to be available to the employer
16 to resist a strike?

17 MR. HICKS: That's a pretty broad
18 question and I don't know whether to read the entire
19 chapter or not. We are saying really in essence,
20 there is very little can be done in the present
21 system provided that the normal conditions of the
22 law prevail. We can't see going beyond an informa-
23 tional picket line for reasons contained in our sub-
24 mission. We are back to again the issue of the right
25 to resist a strike on the part of the employer and the
26 right to strike on the part of the employee.
27 Practically what we are saying is/^{it's} the statis quo on
28 those terms.

29 MR. POLLOCK: Are you saying that
30 the employee is entitled to withdraw his labour after

1 a certain time table has been completed?

2 MR. HICKS: Yes that is fine.

3 MR. POLLOCK: And that he can
4 demonstrate that he is on a strike for informational
5 purposes which perhaps would amount to two or three
6 pickets, at the main plant or the plant operation.

7 MR. HICKS: Of the dispute yes that
8 is the locus of the dispute.

9 MR. POLLOCK: Yes. We'll get into
10 the question of locus of the dispute in a moment.
11 On the other hand the employer can operate the plant
12 if it is feasible without these people and he can do
13 it by employing other people, he can go ^{and} scour the
14 countryside and bring people in. He can perhaps
15 because of the shortness of the employment that these
16 people might be getting offer them more than he was
17 prepared to offer the union people that went on
18 strike. Can you say that?

19 MR. HICKS: He could but it doesn't
20 happen ordinarily.

21 MR. POLLOCK: But in some cases,
22 it depends if he can get them cheaper, if he can pay
23 them, get them for cheaper he'll pay them.

24 MR. HICKS: Well what happens Mr.
25 Pollock is that the employer introduces or installs
26 the terms that have been offered to the union and
27 nothing more and nothing less because he in a very
28 invidious position if he doesn't. If he offers less
29 clearly he is not inviting his present people to stay
30 with him. If he offers more he is in bad faith with

1 the union and with the employees as well and there is
2 a consensus or school of thought that bargaining in
3 good faith continues throughout the term of the
4 strike. If that is the case then I am not prepared
5 to express an opinion. Should that be the case then
6 of course he is subject to a charge of bargaining in
7 bad faith. So that normally and in fact I know of
8 no situation really where they have installed the
9 offer and let it go at that. He's got really no
10 choice in the matter as I say.

11 THE COMMISSIONER: He installed
12 what?

13 MR. HICKS: The offer made to the
14 union. He put into effect the new conditions which
15 were offered to the union, that is to those he engages.

16 THE COMMISSIONER: Well now are you
17 sure that you appreciate the attitude that I think
18 every labour spokesman has shown to this Commission?
19 What they are concerned with and what aroused them, as
20 one person said it is human nature, is the frenzy that
21 is aroused when they see someone sitting in their
22 chair or at their bench or at their machine now; that
23 psychologically is the fact. I don't think you can
24 talk about the information

25 MR. HICKS: That is the risk they
26 take when they go on strike. What the unions are
27 proposing to do sir with respect is eliminate all
28 risk.

29 THE COMMISSIONER: But they haven't
30 proposed anything like that.

1 MR. HICKS: But that is virtually
2 what they are saying. They say close the struck
3 plant, eliminate all risk and loss of a job.

4 THE COMMISSIONER: No they have been
5 asked what they think about that.

6 MR. HICKS: But they are saying by
7 the proposition on the picket line that they are not
8 content with an informational picket line as I under-
9 stand their proposition so that in effect closes the
10 plant.

11 THE COMMISSIONER: I agree there.

12 MR. HICKS: They are saying to the
13 employer "you take all the risk in the strike, don't
14 leave us any risk, we just shut you down".

15 THE COMMISSIONER: But do they have
16 the risk if they've got their wages?

17 MR. HICKS: They've got their strike
18 benefits and

19 THE COMMISSIONER: I agree but you
20 lose your profits and you lose your wages and
21 relatively to the capital in each case is there much
22 difference, now I mean in the essential financial
23 resources?

24 MR. HICKS: I hope Mr. Pollock will
25 refer to the top of page 16 and the bottom of page 15
26 sir. Here again we must go back to the perspective
27 we've been trying to emphasize upon you sir that is
28 the small employer and the individual
29 who was bargaining with UAW and the strike fund of
30 fifty-five million dollars, sorry it's fifty-three

1 million and it is shown at the bottom of page 15.

2 You see sir let us contrast our small employer against
3 the resources of big unions, there is just no compari-
4 son. May I go a step further, there is a presumption
5 that when an employer operates during a strike he's
6 making money. Now this is only a presumption and it
7 is very, very difficult to make money during a strike.
8 You're put to extra expense in so many ways. First
9 of all if you bring in new people there is a training
10 proposition involved. You have trouble in your
11 deliveries because of the obstacles that are put in
12 the way of normal deliveries. You aren't getting out
13 the same level of production again due to green help.
14 You're planning goes all astray because you haven't
15 the viable work force at the time so that the average
16 employer isn't continuing or resisting a strike in
17 the form of continuing operations to make money.
18 Frankly his concern is to stay in business, to keep
19 a stake in the market.

20 THE COMMISSIONER: All right and
21 what you've established is that it doesn't pay him to
22 try to do that.

23 MR. HICKS: It pays him to try to
24 do it to preserve a position in the market. He may
25 be prepared to take a loss but it is the only way in
26 his terms that he can hold his position relatively
27 in the market in the future.

28 THE COMMISSIONER: Well there is
29 no doubt that in large industry that that result
30 happens automatically.

1 MR. HICKS: It happens in small
2 industries as well.

3 THE COMMISSIONER: Therefore you
4 are comparing to the small unit that is really not
5 concerned with much skill.

6 MR. HICKS: Well there is an
7 interesting report in the paper, it would be in about
8 Thursday or Friday's paper last week about the
9 increased profits of the Wabasso Cotton Company for
10 the last fiscal period and why is that and the reason
11 given was the strike at Dominion Textile Mills in
12 Quebec.

13 THE COMMISSIONER: That's what we
14 spoke about this morning.

15 MR. HICKS: I think that underscores
16 the point that you don't make money during a strike
17 sir.

18 THE COMMISSIONER: I agree and I
19 think they're handicapped in every respect and that
20 establishes the fact that closure won't be any worse.

21 MR. HICKS: It will sir because you've
22 got merchandise in goods

23 THE COMMISSIONER: But I don't
24 admit that that would have to follow at all because
25 of what we suggested this morning. You might have
26 a discretionary instrument that would prevent it.

27 MR. HICKS: Again sir if you can
28 find the Solomon in our midst

29 THE COMMISSIONER: Now look Mr. Hicks
30 you know yourself that if I may say this you would

1 probably become an arbitrator who would be selected by
2 the union men.

3 MR. HICKS: That would be the
4 millenium I'm sure sir.

5 THE COMMISSIONER: Well that thing
6 has happened many times in Australia where the man who
7 came from the labor ranks has established himself in
8 such a capacity that he is selected by the employers
9 and vice versa.

10 MR. POLLOCK: It is better to have
11 you on their side than against them.

12 MR. HICKS: I'm afraid I would have
13 to bow out because it presents such an intangible
14 form of determination. However, we interrupted you
15 Mr. Pollock.

16 MR. POLLOCK: Well I think we were
17 talking about the alternatives open to the company to
18 continue the plant by hiring outside employees and in
19 varying degrees of remuneration. Also open to the
20 employer is the sub-contracting out of particular
21 assembly jobs to somebody else or the sub-contracting
22 out of the whole process which is not economic but at
23 least it preserves his contractual obligations with
24 his customers. You've got that in some way balanced
25 off by three miserable people walking up and down in
26 front of the premises with this sign saying we are on
27 strike. Now I would agree that if that was the only
28 thing that if you are trying to achieve a balance and
29 that that wouldn't be a balance

30 MR. HICKS: You're overlooking a very,

1 very important factor and particularly in the condi-
2 tion we are talking about of the last year or year and
3 a half where any striker can go out and get alternative
4 employment at probably as much or more pay than he
5 receives at the struck plant. Let us look to the
6 packing house industry and you have
7 been alluding ^{to} / that this morning sir. That is what
8 happened at the packing house industry and it un-
9 questionably protracted the strike. But they went
10 out and worked at other facilities in the industry
11 with competitors if you will at the same or better
12 money. They were given forty miles a day in two
13 directions and subsidized ^{for} / the truck and so on. Why,
14 because there was a demand for their services and
15 normally the skilled employee has no problem and in
16 the last several years even the unskilled employee
17 has been able to find alternative employment. So
18 there is more than just the placarding at the premises
19 by the informational picketers. There is this
20 alternative right to go and take work and appear and
21 record their presence on the picket line and qualify
22 for strike pay on top of that.

23 THE COMMISSIONER: But if your
24 object is to secure the position of a plant that has
25 a strike on hand you will prevent the competitors of
26 yours from engaging those men.

27 MR. HICKS: We can't sir, as a
28 matter of fact I'm just wondering if it ^{is} / an offence
29 under the Criminal Code.

30 THE COMMISSIONER: Now just a moment

1 Mr. Hicks let us assume that you can prevent it,
2 would you do it?

3 MR. HICKS: Well sir I think black-
4 listing is an offence under the Criminal Code.

5 THE COMMISSIONER: What is an
6 offence?

7 MR. HICKS: I think it's a form of
8 conspiracy.

9 THE COMMISSIONER: What do you mean
10 by that?

11 MR. HICKS: You're in fact
12 suggesting that an employer blacklist.

13 THE COMMISSIONER: I'm not suggest-
14 ing that at all. I'm suggesting this that you make
15 a law that the other man, the man on the other side
16 of the street cannot employ your strikers.

17 MR. HICKS: By arrangement you're
18 suggesting sir.

19 THE COMMISSIONER: Not by arrange-
20 ment, but by law.

21 MR. HICKS: I'm sorry I misunder-
22 stood your position. But I wouldn't want to be
23 responsible sir with all respect for the enforcement
24 of that law because they are so dispersed and
25 scattered.

26 THE COMMISSIONER: Never mind that
27 but if you could do it would you think that that is
28 the proper restriction for the benefit of a struck
29 plant?

30 MR. HICKS: No sir because you are

1 depriving the struck plant from continuing to attempt
2 the
3 to preserve their place in/competitive scheme of
4 things and I would also urge and point out sir that
5 after all the payment for the production which the
6 or
7 strikers have been paid for/the production they have
8 been paid for, is confined to the premises of the
9 struck plant. They've already had their share of
10 the production that is in inventory and the scheme
11 that is suggested

12 THE COMMISSIONER: What do you mean
13 that they've already had their share?

14 MR. HICKS: There's certain inven-
15 tory of goods in the plant, a stock pile.

16 THE COMMISSIONER: Now they've worked
17 and done their share in the accomplishment.

18 MR. HICKS: Yes and they've received
19 their compensation. Now are we to assume that it has
20 been frozen?

21 THE COMMISSIONER: But you're
22 assuming that their only interest is in the compen-
23 sation.

24 MR. HICKS: But I am raising the
25 question that isn't it feasible that the employer
26 should get his return out of that inventory?

27 THE COMMISSIONER: Yes. It is
28 conceivable that he should get his return.

29 MR. HICKS: By selling it, by
30 delivering it.

THE COMMISSIONER: I can quite
understand that but it doesn't, it isn't necessary

1 that he sell it within the next day.

2 MR. HICKS: That may be sir, he may
3 have commitments that if he doesn't deliver he's lost.

4 MR. CLAWSON: It seems to me Mr.
5 Commissioner and Mr. Pollock in this discussion and
6 maybe I'm wrong but we seem to forget who is the
7 initiator of this stoppage. It is the union after
8 all that has called the stoppage. Why then and if
9 that is the case they have made a free choice, why
10 should they not run the risk of being without a job
11 or without the wages. But since they initiated it
12 and let us remember the cause was not just there is
13 also the assumption that every strike is just.
14 Strikes have been known to be very unjust, so therefore
15 why should the employer be penalized because his
16 employees decided to strike. If you say that the
17 employer takes the initiative and calls a lock out
18 then you may require him not to resume production
19 with other employees but that is another question.
20 But I think we are forgetting the initial stage.

21 THE COMMISSIONER: I agree that
22 there has to be a counter-balancing instrument, a
23 kind of balancing force created. You do eliminate
24 the annoyance and disturbance and influence of a
25 picket line, which in some cases it may be very
26 serious because it is nonsense I think to talk now
27 well I won't say nonsense but it is ineffectual to
28 talk about information conveyance and persuasion
29 because when you reach the critical point there is
30 an incensing, they become incensed as somebody said.

1 Now that is a social fact, and the question is what
2 should be done in order to enable not only them to
3 work but for you to carry on a function which is
4 rapidly becoming a more or less essential function
5 of the community?

6 MR. CLAWSON: I fully appreciate
7 what the Commission is groping for. There are some
8 very serious problems here but quite frankly I get
9 frightened when I think regardless of the issues in
10 the strike, regardless of the duration somehow an
11 employer can be forced to be at the mercy of the union
12 and only continue to operate with a few employees who
13 are willing to remain. What if the strike goes on
14 for six months, should he not be able to intrude on
15 the open market?

16 THE COMMISSIONER: Well that is
17 another factor; now let me answer this first. That is
18 exactly what happens to every employer who has at
19 least five hundred men of some required skill today.
20 His plant is closed and he cannot restore it, he
21 cannot maintain it and the strikers are at liberty to
22 take any job they can because he cannot replace five
23 hundred men.

24 MR. CLAWSON: The newspapers here
25 in Toronto did.

26 THE COMMISSIONERS: I agree that you
27 may have a special situation in which one person
28 might be in monopoly control of a certain essential
29 function, that is true. But you take the industries
30 that have say five hundred employees. Can you name

1 one in which there was a strike of all the employees
2 which didn't have to close the door?

3 MR. CLAWSON: Yes sir the British
4 American Oil sir.

5 MR. GAUNT: This is the company I am
6 associated with sir and about a year and a half ago
7 such a thing did take place and I will refer specifically
8 to the plant in Clarkson where we have about 425
9 employees. They did walk out about the middle of
10 September 1965. We ran the plant for four months.
11 This is the refining plant that we ran with supervisory
12 personnel, that particular plant and other parts of
13 the company. They came from other sections and we
14 got people in that we need to run the plant and we
15 did and we ran it successfully. At this time we ran
16 our Moosejaw Refinery which was also on strike and at
17 the same time ran our marketing division in British
18 Columbia which was also on strike, all of them with
19 supervisory personnel and we did it rather success-
20 fully.

21 THE COMMISSIONER: But you ran it
22 by really your existing force.

23 MR. GAUNT: Yes we did. We had to
24 bring in a few people but these were in the catering
25 service. We did not go outnor did we ask those who
26 wanted to come back to come back.

27 THE COMMISSIONER: But so far no
28 suggestion has included that because if you have
29 enough people left in the plant you don't have to
30 bring anybody else in and you can do it, and you

1 don't increase production unless you are in a special
2 situation of operating that can be done by the clerks
3 in the office. You have your supervisory staff
4 there sufficient to operate but take the productive
5 activities of the plant. How many men would you
6 employ actually essential to the carrying on of the
7 operation?

8 MR. GAUNT: Normally there are
9 about 425 people in the plant. This includes office
10 workers and so on.

11 THE COMMISSIONER: Well omit the
12 office workers.

13 MR. GAUNT: It would be about 335
14 or 340 people.

15 THE COMMISSIONER: They went out.
16 They went on strike.

17 MR. GAUNT: Yes.

18 THE COMMISSIONER: How many people
19 did you actually need to run the plant?

20 MR. GAUNT: During the period of
21 the strike, we ran it with about 225/240 people.

22 THE COMMISSIONER: And you got
23 those people from the other plant?

24 MR. GAUNT: A lot from that
25 particular plant and some from other parts of the
26 company.

27 THE COMMISSIONER: Then you must
28 have quite a bit of supervisory membership. How
29 many would you get from that particular plant?

30 MR. GAUNT: In that particular plant

1 we might have had 75 or 80 people.

2 THE COMMISSIONER: And they are
3 normally supervisory?

4 MR. GAUNT: Supervisory or clerical
5 of
6 capacity/one type or another. We use clerical people
7 too and young engineers who weren't necessarily super-
8 visors, technical personnel of one type or another.

9 THE COMMISSIONER: Well that is a
10 fact I agree.

11 MR. HICKS: There is one other aspect
12 that concerns us sir and that is whether or not in
13 defining the formula we are discussing wouldn't lead
14 to a greater instance of strike action. This is a
15 nice question because if the union feels that by
16 threatening strike or by conducting a strike they can
17 effectively confine in a curtailed fashion or shut down
18 completely an operation there may be a greater
19 inclination to strike.

20 THE COMMISSIONER: Well isn't that
21 the object of a strike?

22 MR. HICKS: Well if they are assured
23 it will go down. If they have some guarantees or
24 insurance that it will go down completely without
25 really their participation as such.

26 THE COMMISSIONER: Well that all
27 depends on the cohesion of the striking union.

28 MR. HICKS: But won't it lead to a
29 higher instance of strikes or frequency?

30 MR. CLAWSON: One of the deterrents
of a strike is that it may be risky and he may be he

1 would be able to keep enough present employees in the
2 plant or recruit enough to operate and this is one of
3 the deterrents of a strike not of this economy in the
4 last year or so.

5 THE COMMISSIONER: But they place a
6 great deal of emphasis on the power of the picket line
7 in coercing their own striking members and they won't
8 have that. It would give a greater liberty to those
9 who are opposed to the strike to go without any inter-
10 ference.

11 MR. CLAWSON: You mean that if the
12 picket line were taken away completely.

13 THE COMMISSIONER: Yes.

14 MR. CLAWSON: I don't think the
15 main risk that the unions have had has been the danger
16 of hiring new employees. If they had been worried
17 about the number of existing employees who are
18 persuaded to go on, most of the picketing is directed
19 against them.

20 THE COMMISSIONER: Against their
21 own men.

22 MR. CLAWSON: Yes.

23 THE COMMISSIONER: Yes that is what
24 I say. Now if you can remove that you are opening a
25 door in effect to more persons who are opposed to the
26 strike.

27 MR. CLAWSON: There are a lot of
28 interference with individual freedom there but that's
29 maybe not up our line.

30 MR. STEWART: Well this is the thing

1 that I thought the opening statement made clear Mr.
2 Commissioner. It is that the picket line as a physical
3 location at a plant and there are so many other ways
4 to bring persuasive techniques into force.

5 THE COMMISSIONER: That is true.

6 MR. STEWART: And this in fact is
7 one of the unusual features.

8 THE COMMISSIONER: But here at least
9 I'm giving it to you as it was described by the people
10 who were interested because here you reach climax and
11 that climax is for the purpose of inspiring our own
12 men to act. The difficulty of course is in holding
13 that level up so high like spiritual exultation or
14 something.

15 MR. WOXMEN: May I interject here
16 that we are all in the dark as to that inspiration to
17 act as to what clear cut majority of the total
18 employees did legitimately vote, that is of the total
19 employees going to be involved in that strike. Here
20 again we bring in the secret ballot, their requirement
21 for knowing the true value of those employees who want
22 to strike and we don't really know of as employers.

23 MR. POLLOCK: I suppose you could
24 look at your plant the day of the strike and count
25 your men that are there.

26 MR. WOXMEN: No that's not so. I
27 would say as an unqualified statement that we just
28 don't know.

29 THE COMMISSIONER: I would like to
30 have it if you could possibly get it, some information

1 on how many strikes have been futile in the sense
2 that the protective capacities were exercised by
3 bringing in outside men, the degree of skill required
4 and the general effect of having an open market to go
5 to. Because it seems to me that we can't or can a
6 society go on with this maintenance of almost a hatred
7 between the two essential groups where we are all
8 engaged, we are all workers I think in this country
9 and there are very few who are not. We are all
10 engaged in doing something, building up a state or a
11 country. Now why perpetuate unnecessary conditions
12 which can only aggravate the relations between
13 different groups. We lay down certain principles
14 at first and we are basing our whole action upon the
15 participation of the individual in his initiative and
16 that is unchallengeable. Then when you do that you
17 realize that public service has become really a service
18 of the utmost important because as I think you men-
19 tioned it this morning this is becoming a functional
20 society. The functions are being reduced to the
21 control of a small minority and they can play a very
22 destructive part by individual action of relatively
23 few people. You have these huge combinations of
24 control and yet our society and the whole apparatus
25 of it is built upon the assumption that these functions
26 will be maintained. So that we are all involved now
27 in the task of strengthening and consolidating and
28 creating a society that will have internal reconcilia-
29 tion to some degree, to a satisfactory degree. And
30 I say you can't have that if you have the mass of

1 workers embittered and it may be to some degree and
2 reasonable, but is it better or is it worse to compel
3 the persistence of that rather than to make a minor
4 concession and obtain a greater benefit. Now I am
5 just suggesting these things because I would be very
6 much obliged if as you reflect this discussion you
7 would let me have your further views because this is
8 a rational question to be decided upon the weight of
9 the factors involved in the total situation. Now
10 anything you have to say I would say would be gratefully
11 received.

12 (10 minute recess)

13 MR. POLLOCK: Returning for a moment
14 to the question of alternate union tactics in the
15 picket line, it has been suggested that the simple
16 communication of information by a fact must to be
17 successful be coupled with a type of persuasion and
18 that a large number of people supporting an ideal are
19 more persuasive, apart from their physical presence,
20 they are more persuasive than two or three people who
21 are walking up and down in the picket line carrying
22 signs. (a) because in some cases people suggest
23 well those are the leaders of the union and they don't
24 really speak for the majority of people, people coming
25 into the plant don't realize that the whole unit is
26 out on strike and they say only two or three people
27 are there. Secondly they are probably average people
28 that are questioning whether or not they are going to
29 cross the picket line, they are influenced by a group
30 of people that say we have a number of people that

1 hold this view and it is therefore a stronger view than
2 if two or three held the view. What do you say about
3 those arguments in the picket line discussion as to
4 numbers, assuming that you don't block the entrances,
5 that is physically obstruct the people. All you do
6 is have a number of people there and they say we are
7 all supporting the sign that is carried by our members
8 that this plant is on strike and that Company A is
9 unfair.

10 MR. HICKS: You are suggesting that
11 it would still be a peaceful picket activity and we see
12 nothing wrong with that.

13 MR. STEWART: It is an ideal that we
14 never observed, there are a large number of people
15 it is unfortunate that violence or assault or blocking
16 of some sort occurs.

17 MR. POLLOCK: Well of course it
18 depends on how organized it is and I think you are all
19 familiar with the dispute at Peterborough where they
20 had some two or three hundred people in a group march-
21 ing around there and there was no violence and there
22 was no obstruction really. The people went through
23 the line all right.

24 MR. STEWART: First of all there was
25 already an injunction and it was completely and I don't
26 mean this in any nasty sense, but it was completely a
27 staged affair. The television cameras were ready,
28 the photographers were there and all the news media
29 were there ready to take pictures of the injunction of
30 the Supreme Court of Ontario being defied. This is

1 the only time I am quite ready to admit that this is
2 the only time that I have ever heard of a large demon-
3 stration being carried on in a peaceful manner. It
4 at least proves it can be done if the union puts its
5 mind to it. In every other situation that I have seen
6 wherever there has been a number or a large number of
7 people for the reasons Mr. Commissioner that you men-
8 tioned earlier, there tends to be violence and obstruc-
9 tion.

10 MR. POLLOCK: Turning now to the
11 question of the locus of the dispute, if you have a
12 plant such as British American Oil or any company that
13 has a large number of units in the province and one of
14 them is on strike and it can exist as a functioning
15 entity by the production it does at the other premises,
16 would you permit picketing at those other premises?

17 MR. HICKS: No. Our view as the
18 brief says and it states Mr. Pollock that it is simply
19 a spreading out of the problem. It is increasing.

20 MR. POLLOCK: But the employer is
21 obtaining the succour if you want to call it that of
22 the other plant, it is the fact of the existence of
23 these other plants in the production that they can
24 produce and the profit that they can make or the money
25 that is coming in that permits this other plant to be
26 closed.

27 MR. HICKS: But it is also involving
28 employees in that other unit whether they are in the
29 union or not. They may be in a different union that
30 don't want any part or parcel of the strike but they

1 are automatically there and they are involving the
2 office staff and they may not be represented
3 by a union.

4 MR. POLLOCK: How are they involved?

5 MR. HICKS: By the type of picket
6 line that they influence people that may not cross it
7 and whatever other form it may take. It may be a
8 completely legitimate and lawful picket line, an
9 informational picket line if you will, but there are
10 those who will not cross such a picket line and even
11 if you run the Teamsters to cite a union situation,
12 they are generally speaking opposed to their members
13 crossing any picket line, it doesn't matter whose
14 picket line that is involved, they oppose it. So
15 that you are spreading the infection and you are
16 involving more people unnecessarily, and innocent
17 people such as the employees in that particular
18 facility, be they production or clerical.

19 MR. POLLOCK: But the employer is
20 not innocent. The employer in this plant is not
21 innocent in the struggle he is part of that corporation.

22 MR. HICKS: That is at that certain
23 locality. But again every time it spreads out you
24 are involving more innocent strangers to the strike.

25 MR. POLLOCK: I know in British
26 Columbia there is a policy that if one plant is
27 picketed then they will close the operation of the
28 other plants to avoid any altercations.

29 MR. HICKS: There are wierd and
30 wonderful things that take place the other side of

1 the Rockies.

2 MR. HENLEY: The many things that
3 take place in different situations. There are
4 different employees that deal with half a dozen
5 international unions and another half a dozen locals
6 in each of the half dozen international unions. Now
7 permitting picketing is an assumption that there may
8 be sympathy for the struck location. It may be that
9 we arrive at an international and the combination if
10 you can get it in multi-location and national inter-
11 provincial companies dealing with a large spectrum
12 of national and international unions is just fantastic.

13 MR. POLLOCK: You are going to
14 reduce my argument?

15 MR. CLAWSON: No. The situation
16 we have always heard of is the garbage strike in
17 Vancouver. Not content with picketing the garages
18 where the garbage trucks were they also decided to
19 picket the garbage dumps and to prevent the private
20 citizens from taking their own garbage out and this
21 is one of the problems that arises as Mr. Henley said.

22 MR. WOXMAN: There was a problem
23 involving the Richard Wilcox Company in London this
24 last winter in which a peaceful picket line did
25 occur. This occurred over such an extended period
26 of time that it was a rather stalemate situation
27 between lack of negotiation actually until finally
28 the peaceful picket line became a part of duress on
29 the part of the members because the members began to
30 be dissatisfied and they said well evidently we have

1 an abnormal picket line, a disruptive type of picket
2 line in order to enhance, to stimulate the need for
3 negotiation. So I am not saying that there is a
4 solution for that I am merely saying that this part
5 of the dilemma that a peaceful picket line doesn't
6 always lead to the type of solution that we as
7 employers and employees want to find too. I think
8 eventually they did reach a settlement here however.

9 MR. POLLOCK: I think the best
10 example of that is found in the case where the union
11 can picket and there is no injunction and the company
12 closes down and they outlast the union and the picket
13 line is really of little consequence in the circum-
14 stances. Then it is a question of frustration with
15 the ordinary withdrawal of labour and the company is
16 outwaiting them and they can't exist without us and
17 then there is a resort in some cases to ~~destruction~~
18 of equipment in that type of activity.

19 I wonder if Mr. Hicks
20 would make an observation here. Much depends on the
21 type of business because those in the consumer
22 products supply a division as against a supply company
23 have a very vested interest irregardless of the
24 economic fact that we must maintain a direct main
25 communication with our outlets. It is one thing to
26 be a supplier to an industry who in turn supplies
27 the end product to the consumer. But is the old
28 story that a dealer lost is never regained and I think
29 this is the point that we were attempting to make here
30 before and that can apply to B.A. Oil or an automobile

1 or a refrigerator.

2 . You talk throughout
3 your brief with relation to secondary picketing and
4 boycott of neutrals, now the problem with neutrality
5 is that you can breach neutrality if you aid one of
6 the enemies. You can keep yourself out of the whole
7 picture and say I'm not going to deal with Company A
8 because it is involved in this labour war, and you
9 won't help the union at all. Then you are truly
10 a neutral. But if you deal with Company A so as to
11 assist them in prolonging the strike and in effect
12 defeating the union then you are no longer a neutral
13 surely in the eyes of the union anyway and probably
14 an objective view.

15 MR. HICKS: Aren't you a neutral so
16 long as you are not called to decide the merits of the
17 strike? They are not making a decision as to the
18 merits of the strike at all. They have commitments
19 and these are prestrike commitments.

20 MR. POLLOCK: And a prestrike commit-
21 ment that might be a different situation but in post-
22 strike commitments, take the Herseys for example and
23 we are assuming that there was a strike at the primary
24 producer. The picketing that took place in Woodstock
25 the picketing had said and they went to Mr. Hersey and
26 said don't buy any more suits that are made at this
27 plant. If you've got some now all right you can get
28 rid of them but don't buy any more, and assuming that
29 he sold out all his shipments and said I'm going to
30 buy some more suits because I need more of those suits

1 and the pickets came up in front of his place with a
2 sign as they did say attention shoppers don't buy
3 Beacon Brothers suits that are sold here and perhaps
4 they could say buy somebody else like buy Shiffer -
5 Hillman. So the man who is getting his whole
6 enterprise, his whole commercial enterprise isn't
7 disrupted, he's pointing out to the people to make
8 a positive choice but don't choose we suggest one of
9 the products that is made by a struck plant, because
10 perhaps this employer or this merchant is benefiting
11 from lower rates of pay or poor working conditions or
12 something like that. We are saying to you please
13 don't buy that one buy somebody elses. What is
14 wrong with that?

15 MR. STEWART: Well if and this is
16 a big if, if the individual shopper in seeing that
17 thought
18 picket line went through the /process that you have
19 described and decided not to cross over that picket
20 line not because of any argument against Herseys but
21 because he did not want to go to a retailer who
22 supported a strike that he knew the issues of and he
23 knew that that was a just strike, if that was his
24 thought process then you perhaps would justify it.

25 But I don't think that most people coming upon a
26 picket line go through that sort of thought process.
27 Rather what they do is look at the picket line and
28 conclude that there is difficulty there and they read
29 in the paper about altercations on picket lines and
30 that is enough for them, they turn away. It is this
turning away automatically and this is what we try

1 to stress in our brief, it is the automatic effect of
2 the picket line that causes the harm. If in fact it
3 was a line of reason and it did not have the automatic
4 effect then it could be that you could use the picket
5 line in a more far flung way. But since it does have
6 this automatic effect the unions can use it, assured
7 that it is going to have success. And it is going to
8 harm the retailer.

9 MR. HICKS: In other words it is
10 more of a emotional reaction rather than a rational
11 reaction. It is not one that is given to logic in
12 the decision, it is one that gives way to emotion.
13 And we are by and large emotionally constituted
14 "critters".

15 MR. POLLOCK: There is a distinction
16 at least between that type of picketing and the type
17 of picketing that you point up in Heather Hill where
18 the aim of the union is not at the struck product but
19 at somebody who is dealing with the struck employer.
20 Now that perhaps in some cases is tersery picketing.
21 The first example I gave you is primary picketing in
22 the United States as your brief points out. It is
23 considered primary because it is aimed at the dispute
24 and you suggest that that remain as it is now as
25 opposed by case law.

26 MR. HICKS: Yes.

27 MR. POLLOCK: It is unlawful.

28 MR. HICKS: Yes.

29 MR. WOXMAN: Well there must be
30 responsibility to this too, Mr. Hicks, if I might make

1 an observation. We had a case of buying material
2 and having purchased this material from the Wolverine
3 Tube Company in London. This material was delivered
4 to a separate warehouse and had not yet been delivered
5 to our plant. When that material was delivered to
6 our plant we had half of our plant go into a secondary
7 boycott and refused to work. We had no liability
8 against these people and we had the choice of either
9 deciding we weren't going to use the material.

10 MR. POLLOCK: You had no liability
11 against whom?

12 MR. WOXMAN: The union.

13 MR. POLLOCK: But don't you have
14 arbitration provisions?

15 MR. WOXMAN: But no practical
16 approach and really the only choice we had at the
17 time and these were the peaks and I'm very glad to
18 mention the peaks, to either use the material at
19 that time or set the material aside and in this case
20 we sought material elsewhere. This becomes a
21 responsibility I think that is again we are trying
22 to seek and find particularly under secondary boy-
23 cotting. This is a thing that never even reached
24 the public view.

25 THE COMMISSIONER: Well I was going
26 to say that this is on one occasion that was in the
27 twenties when the Attorney General came into the
28 British House of Commons and made a proposal in one
29 of the acts that were relevant and I've forgotten
30 what it was but somebody asked him why he didn't

1 arrest these people and he said I haven't enough
2 courts or gaols to hold them.

3 MR. HICKS: Speaking of British
4 Columbia Mr. Pollock I'm sorry you know that they
5 outlawed the secondary boycott in British Columbia.

6 MR. POLLOCK: Yes there are indeed
7 strange things that go on beyond the Rockies. It is
8 outlawed in Ontario without legislation.

9 MR. HICKS: That is right.

10 MR. STEWART: There is two cases in
11 Ontario, one of the Court of Appeal which could be
12 restricted on its facts as you mentioned and then
13 this other Heather Hill case which is also at the
14 Court of Appeal. I'm just saying that because if
15 a client asks you to give him an opinion on secondary
16 boycotts being outlawed in Ontario you don't say
17 secondary boycotts are outlawed in Ontario. You
18 never can tell.

19 MR. POLLOCK: Well you don't give
20 them a certificate to that effect in any event. The
21 question really is when and you say that it is
22 against the public interest to spread the dispute.
23 Now there would be much support to your argument if
24 the employer in the attitude or if the employer in
25 this situation took the same attitude and he said
26 all right we're going to limit the picketing to my
27 plant where my number production takes place. I am
28 not going to engage anybody else outside the ambit
29 of my physical or geographical jurisdiction to
30 assist me. There is consistency in the argument.

1 The union will argue that if you are prepared to go
2 other places to get help we are going to get other
3 places to get help as well.

4 MR. HICKS: To finish the equation
5 then you've got to deny employees the right to work
6 elsewhere and I defy you to police that situation, it
7 would be impossible to police it.

8 MR. WOXMAN: Well remember that it
9 takes effect only in a small plant and that is what
10 you reduce it to and I think you are quite right. It
11 is a small plant.

12 MR. HICKS: Well take the multitude
13 of small plants here in this community.

14 THE COMMISSIONER: But you can take
15 small numbers. You can't face large numbers very
16 easily. Where you limit it to a narrow range and I
17 would say if there is any skill required at all it
18 would be difficult within a short time to replace
19 even 350 men. Special situations may arise such as
20 the oil company where you can bring in from other
21 plants in their own plants and in one sense they are
22 simply transferring the locus of work for their
23 employees. Take the ordinary single plant or
24 industry and this situation in my opinion at least, it
25 seems to me from what I've heard that it is different.

26 MR. HENLEY: But I suggest Mr.
27 Pollock that the union on the basis of that argument,
28 with the unions then the union's financial resources
29 should be restricted to those attributable to the
30 check off from that struck plant, and not from dues

1 collected from all locals both national and inter-
2 national. If you are going to deny the company in
3 one location access to its corporate succour or
4 resources then I think the same restriction would have
5 to be placed on the local of a union, the UAW or any-
6 body else, with no access to fifty-five million
7 dollars but access to \$25,000 that has been saved over
8 the last few years.

9 MR. HICKS: Certainly the smaller
10 plant doesn't have access.

11 MR. POLLOCK: Well maybe that would
12 be the best solution to shorten strikes down.

13 MR. HENLEY: I'm not advocating that
14 Mr. Pollock.

15 MR. POLLOCK: Well it's too late I've
16 already accepted your offer. The other question does
17 this matter have ambulatory picketing where you have a
18 company that is located in some industrial complex away
19 out of anybody's reach and they have production there
20 and they send it to the trucks and can you go and picket
21 the trucks of the company as they deliver to other
22 people. That is a problem that hasn't been satis-
23 factorily resolved in the United States but then it
24 is question of site. What is the status of this
25 plant, what is its operation? Is it 123 Edwards
26 Street or is it where his business is carried on in
27 the retail stores, his retail outlets or his trucks
28 with those other aspects? I would think that many
29 people would agree with you that it ought to be
30 restricted to the primary status to do the primary

1 picketing. But not many would agree with each other
2 as to the definition of what primary status is. So I
3 think we've probably argued that one out.

4 MR. STEWART: I think it is fair to
5 say that this doesn't arise very often or it hasn't
6 arisen very often in Ontario.

7 THE COMMISSIONER: But I think with
8 that
9 reference to scattering this/you make the inference
10 stronger. The only way to stop that picket line is
11 to abolish it. It would certainly be applicable
12 very effectively in construction work. Here you
13 have a half dozen picketers that will hold up a multi-
14 million dollar construction job by walking around a
15 plant.

16 MR. POLLOCK: Turning now to part 5
17 on page 22 in the consideration of statutory remedies
18 and the conclusion of that paragraph, you suggest the
19 of its policy
20 Board's rationale /in this regard with relation to
21 declaring a strike unlawful and getting leave to
22 prosecute appears to be premised on the theory that
23 the purposes of the remedy have been served if
24 employees have returned to work following an employer's
25 application to the board. Such policy invites breach
26 of the statute because of the clear inference of
27 condonation of illegality. From the practical point
28 of view, it leaves the affected employer in the
29 position of being unable to establish illegality as
30 a deterrent to further stoppages. The question I
have in that regard is that this attitude of settle-
ment pervades the whole labour relations sphere. It

1 is probably the reason why only one of hundreds of
2 injunctions has ever gone to trial and it is probably
3 the reason why many charges of illegal activity on
4 the picket line have been withdrawn.

5 MR. HICKS: But that is by agreement
6 with the parties and this is imposed by the tribunal.
7 There is that distinction. This is not optional to
8 the parties. This is an option exercised by the
9 Board.

10 MR. POLLOCK: But it is a realization
11 of the existing situation by the Board if it insists on
12 carrying out, I am sure that the next step would be
13 the employer saying well you're causing us a great
14 deal of difficulty rather than resolving any problems
15 for us.

16 MR. CLAWSON: They wouldn't have to
17 proceed with the prosecution they could still agree
18 not to proceed.

19 MR. POLLOCK: But what do you
20 accomplish by having this thing

21 MR. HICKS: We accomplish by having
22 the record make clear that the rank and file, those
23 involved, have conducted themselves unlawfully.

24 MR. POLLOCK: You are building up
25 statistics is that it?

26 MR. HICKS: No sir we are building
27 up an understanding through the only route available
28 to us at the present time of responsibility. We are
29 trying to generate with the rank and file an under-
30 standing of their responsibilities at law and you can

1 see what happens when we do pursue the remedy and we
2 have to withdraw it or the Board denies it, then they
3 are left with the impression that they were acting
4 lawfully.

5 MR. POLLOCK: It is an educational
6 process?

7 MR. HICKS: Primarily yes.

8 MR. POLLOCK: Why don't you proceed
9 with their education in the other cases where you want
10 to show people what unlawful picket line activity
11 means, or that violence on the picket line ought not
12 to be committed. Why do you make the distinction
13 between labour relations board functions and deter-
14 minations and the criminal functions and civil actions?

15 MR. HICKS: We frankly don't think
16 there should be any distinction. We disagree with
17 the comprises that take effect normally. There may
18 be exceptional circumstances where as a matter of
19 judgment and prudence you are disposed to settle or
20 withdraw prosecutions. But we take exception and we
21 think we are on record in our submissions to that
22 effect. We disagree with this. We think they
23 should be proceeded with and proceeded with expeditiously,
24 if there is to be respect for the rule of law.

25 MR. CLAWSON: In many cases they
26 are.

27 THE COMMISSIONER: When you say "we
28 disagree" who do you include?

29 MR. HICKS: The Association sir.

30 THE COMMISSIONER: But you evidently

1 don't include the majority of employers who are
2 involved in strikes although they may be members of
3 your organization. Because they do that, but they
4 don't have to withdraw. They do it as a matter of
5 policy.

6 MR. HICKS: We agree with you. We
7 don't condone it sir.

8 MR. CLAWSON: I don't think this is
9 an assumption that this is invariable assumption and
10 this is not correct.

11 MR. POLLOCK: Well it seems to me
12 that if it hadn't been a practice that there would
13 have been more injunction cases and actions taken to
14 trial than one.

15 MR. HICKS: Well then again I know
16 of the discussions you had privately involving this
17 kind of problem so there are 350 people in a plant of
18 600 subject to subpoena to give evidence and at the
19 moment they are all callable. Then the operation can
20 be effectively shut down again to serve the purpose of
21 the proceedings. That the practicality of these
22 things often outweighs the result. This is the
23 problem.

24 MR. POLLOCK: A short term
25 practicality.

26 MR. HICKS: Yes but vital to that
27 locality.

28 THE COMMISSIONER: I don't quite
29 follow that 350 people.

30 MR. HICKS: Supposing there are

1 four hundred involved in a wildcat that lasts for ten
2 days and you make an application to the Board for a
3 declaration or leave to prosecute. Each of the 350
4 or 400 whatever/^{number}is involved are called to appear. Now
5 I am reminded sir that the only remedy effective that
6 we have at the moment is a penal punitive quasi
7 criminal remedy, as against a remedy against the union
8 per se as a fully fledged entity, or a legal entity.

9 THE COMMISSIONER: Well that may be
10 so.

11 MR. POLLOCK: Well why would your
12 experience here if that was the case be any different
13 than the one in British Columbia where they have
14 exactly the same record and they have ability to sue
15 the union?

16 MR. HICKS: I am sure I don't know
17 Mr. Pollock.

18 MR. POLLOCK: Well I think the
19 answer is that people will settle these things because
20 it is all part of the tactical battle in labour
21 relations.

22 MR. CLAWSON: Do we know what the
23 incidence of wildcat strikes has been since that act
24 was enacted?

25 MR. POLLOCK: Yes and there's not
26 much difference between the record here and there.

27 MR. HICKS: If I may analogize we
28 have taken, the management here have ~~not~~ taken another
29 route that is far more difficult and that is the
30 arbitration route and there are a number of awards.

1 MR. POLLOCK: That is during the
2 currency of the agreement.

3 MR. HICKS: Yes and I would suggest
4 having taken that route they would be just as ready
5 to take the other civil route if it were available to
6 them. But they are parallel really in remedy.

7 MR. POLLOCK: That is for definite
8 unlawful activities of an illegal strike.

9 MR. HICKS: During the currency of
10 the agreement yes.

11 MR. POLLOCK: But the injunctions
12 apart from those instances, the injunctions are
13 granted usually during a legal strike, during a strike
14 that is.....

15 MR. HICKS: Normally because there
16 are higher incidences of them.

17 MR. POLLOCK: That is right. Are
18 you suggesting that discussion of the injunction and
19 it carries on from the last comment that you agree
20 to compensate the defendant for damages suffered.
21 That is the standard term in the injunction. Now
22 if these cases never proceed to trial and there was
23 reasonable exploitation in the union's mind and in
24 the company's mind that these things won't proceed
25 then that undertaking as to damages is ethereal, but
26 even granted that there might be an occasion when
27 this case would go on and you could demonstrate that
28 the injunction was wrongfully obtained what are the
29 damages. How can you assess the damages that flow
30 from a strike that has been lost by the interposition

1 of an injunction or the limiting of picketing?

2 MR. HICKS: Well firstly we are
3 proposing that the trial be expedited.

4 MR. POLLOCK: Well the sooner-you
5 do get right onto the case in two weeks.

6 MR. HICKS: Which would, I think,
7 meet you fundamentally your problem.

8 MR. POLLOCK: Well how would you
9 determine what the damages would be?

10 MR. HICKS: Well if the trial
11 were brought in within two weeks damages wouldn't be a
12 particularly pertinent issue. It might if there were
13 six months but if it were brought in through process
14 of speedy trial ordinarily this wouldn't be an issue.

15 MR. POLLOCK: Well you couldn't prove
16 any damages. They just physically couldn't prove any
17 damages.

18 MR. HICKS: I don't know.

19 MR. STEWART: You are talking about
20 the damages that the union suffers.

21 MR. POLLOCK: Yes.

22 THE COMMISSIONER: The terms that
23 unions suffer, damages that the union suffers, how
24 do you know that?

25 MR. HICKS: Well ^{the} union has to prove
26 that.

27 THE COMMISSIONER: Well you're
28 taking a part and trying to work out the rights of the
29 union?

30 MR. HICKS: We'll strike that out.

1 MR. POLLOCK: You want to eliminate
2 other
3 that then. The only/suggestion could be made that
4 there ought to be some figure deemed to be damages
5 at so much per day if they do establish that your
6 activity or your injunction was obtained wrongfully
7 that perhaps there ought to be some damages deemed.

8 MR. CLAWSON: Well this was mentioned
9 by some union people or some union research person and
10 we just went along with it, we didn't invent this.

11 MR. POLLOCK: Well the fact that is
12 is often suggested that this order is a fair order
13 because it says if we have caused this damage wrong-
14 fully that we will pay you the damages and of course
15 I think it defies calculation.

16 MR. STEWART: It has little applica-
17 tion. I don't think we're giving up too much by
18 saying that. I've never heard it alleged and I've
19 never heard of anyone attempting to enforce it in
20 any way.

21 MR. POLLOCK: I think there has only
22 been one case that has gone to trial.

23 MR. STEWART: I didn't even know
24 about that one. You mean one injunction case.

25 MR. POLLOCK: Yes. Now going
26 through the case studies that you have on page 23,
27 you have six of the eleven injunctions were obtained
28 and
29 originally on ex parte applications / these appear
30 to involve the most serious cases - Amalgamated Electric,
Lanark, United Farms, Holland River, Wolverine Tube
and Tilco Plastics. Now perhaps you aren't prepared

1 for this question but I will ask it anyway. What
2 were the unique factors in those cases that demanded
3 ex parte action?

4 MR. STEWART: Well first I think
5 to point
6 it is important/out what everyone knows is that since
7 the Fall of 1964 ex parte injunctions have been
8 granted and I submit properly so with less frequency.
9 I think there became an awareness on the part of the
10 court that there had been perhaps I won't say indis-
11 criminate but perhaps the use of the ex parte
12 injunction too readily. About that time a decision
13 was made to encourage, to be given notice on these
14 proceedings. Therefore you will note that those six
15 cases where the ex parte injunction was obtained they
16 were before September 1st, 1964.

17 MR. POLLOCK: With the exception
18 of Tilco Plastics, that is one I know for certain.

19 MR. STEWART: And that is the one
20 exception yes that is right. Now in each of those
21 cases the unique features were that they complied
22 with Section 17 of the Judicature Act, everyone of
23 those six cases because there was a breach of the
24 peace and either irreparable property damage or
25 personal injury occurred. And in each of those cases
26 in effect what it amounted to was almost insurrection
27 from the first day of the strike. Also in each of
28 them you had a situation where the police for some
29 reason or another were not enforcing the normal
30 criminal law neither to laying a charge or preserving
order. Now that was the background of each one of

those cases.

MR. POLLOCK: The first day of
Wolverine Tube.

MR. HICKS: That was mass picketing.

MR. POLLOCK: Yes mass picketing.
Apart from mass picketing there were many breaches of
the peace on the first day.

MR. HICKS: But the injunction wasn't
obtained on the first day. There was mass picketing
and interruption of cars entering the plant and
damage to the cars entering the plant.

MR. POLLOCK: There wasn't any
damage done.

MR. HICKS: There was a rejection
the
of/driver of the truck who wasn't permitted to cross
on
the picket line/the first day as I recall. And
related incidents on the picket line through mass
picketing.

MR. POLLOCK: I think the fact that
the policy has been changed, I think that perhaps it
was maybe more convenient to obtain an ex parte
injunction and perhaps that convenience has caused
a lot of difficulty. I think now that notice is
probably a better way of handling it and

MR. HICKS: That's why we suggest
a bridging of the length of notice.

MR. POLLOCK: The Tilco case was
one by your terms an aberration I suppose from the
practice.

MR. STEWART: I was surprised when I

1 noticed it.

2 MR. POLLOCK: It granted a complete
3 injunction against any kind of activity. In circum-
4 stances where those who were involved at labour
5 relations wouldn't think there was really a hot and
6 heavy struggle. I understand that there are some
7 circumstances in your position that ex parte ought
8 to be granted and in others it ought not to be. Can
9 you tell me what the circumstances are in the ex parte
10 and give some flesh to rule 17.

11 MR. HICKS: You mean by example Mr.
12 Pollock. Let's take laboratories for example. And
13 let us assume that their engineers go out, their
14 refrigerant engineers. They have a multi-million
15 dollar inventory of biotics and medicines that are
16 essential to the hospitals in the province. They
17 have to be maintained at a fixed temperature, if it
18 fluctuates five or ten degrees it is worthless. We
19 suggest that in that kind of situation an ex parte is
20 justified. There must be an assurance of the
21 preservation of that operation for the safety and
22 health of the citizens of the province.

23 THE COMMISSIONER: Would it be any
24 greater burden on you if you were called upon to
25 bring two or three witnesses to give evidence on that
26 ex parte?

27 MR. HICKS: No sir it would be
28 easier and we would prefer it. We are saying that
29 a full hearing, an expeditious hearing

30 THE COMMISSIONER: And you could

1 call it by telephone if necessary to tell the other
2 side that you are making that application?

3 MR. HICKS: If that is the prescribed
4 procedure.

5 MR. POLLOCK: So once you get out
6 of that stage we're really not ex parte any more are
7 we?

8 MR. HICKS: No we're not.

9 MR. STEWART: I think the ex parte
10 isn't an issue. I agree and we can't ignore what
11 the historical facts are Mr. Pollock, but I don't
12 think it is really an issue. I haven't

13 THE COMMISSIONER: But it is a
14 fancy word.

15 MR. HICKS: Yes it is.

16 MR. POLLOCK: Well I think it is
17 an issue in the sense that it does get or give one
18 side an opportunity to perhaps get on the road and
19 get the injunction without giving the other side an
20 opportunity to argue against.

21 MR. HICKS: Only because of the
22 length of notice.

23 MR. POLLOCK: And you know from
24 your practice that it is a lot easier than a question of
25 one judge looking to see what another judge has done
26 or if it is a question of getting an adjournment it
27 is going to be an adjournment with the injunction
28 continuing.

29 MR. STEWART: I've heard that before
30 and I take issue to it. I don't know that it is a

1 lot easier as a matter of fact I think it is much
2 more difficult. First of all if you're on an ex parte
3 application / ^{there} is a fantastic onus on the counsel
4 presenting the case to be sure that the facts.....

5 THE COMMISSIONER: That's why it
6 would be beneficial to take two or three witnesses.

7 MR. STEWART: I agree completely sir.

8 THE COMMISSIONER: Then the judge
9 there could be satisfied himself by sizing up these
10 witnesses.

11 MR. STEWART: I couldn't agree more
12 sir and this is the other point. We also say in our
13 brief that very, very seldom do union counsel or the
14 picket's counsel attempt to cross-examine people on
15 the affidavits. The reason for this which I must
16 suspect isn't because they know it's a foregone
17 conclusion but it's simply because in fact the acts
18 have occurred which are complained of. There has
19 been blockading.

20 MR. POLLOCK: That is probably true
21 in some circumstances, but in others the fact that an
22 injunction has been obtained and that if you are
23 going to cross-examine the mere physical time involved
24 in cross-examining and making an appointment, in
25 cross-examining and having the transcript typed and
26 then presenting it to the court there is something
27 that is going to involve another adjournment and at
28 the early stages of the strike we have been told if
29 you have got an injunction that lasts a week or two
30 weeks and there is no picketing you might as well

1 forget it because your strike is dead.

2 MR. HICKS: Oshawa Times was brought
3 on in forty-eight hours or twenty-four hours.

4 MR. STEWART: We gave notice then
5 and we commenced our application I believe on a
6 Thursday afternoon the motion was returnable on Monday
7 morning in weekly court. On the week-end we received
8 a call from the union solicitor who wished to examine
9 our main affiant or opponent. We made him available
10 that morning prior to court and he was cross-examined
11 and then in front of the court later on the union
12 counsel advised the court he was not objecting to the
13 terms of the orders sought or/I'm afraid that is one
14 of the injunctions that became one of the two causes
15 celebre in this province last year. Now that is the
16 full exercise of rights/I agree that it wasn't as
17 great an exercise of rights as I would like to see.
18 The court facilities are not at the present time
19 devised to allow complete expansion of rights here
20 but there was some and obviously enough so that he
21 could consent to the order.

22 MR. POLLOCK: The other question
23 that follows chronologically I suppose the judicial
24 attitudes towards unions and you compiled on page 24
25 some kind of an analysis of judgments involving
26 unions. I have read it and I must confess four times
27 and I don't understand its relevance unless you say
28 that the judges aren't biased against plaintiffs any
29 more than they are against defendants.

30 MR. STEWART: It is presented here

1 to show that the statistical counts do not support
2 allegations of bias against trade unions by the
3 judges of our Supreme Courts.

4 MR. POLLOCK: It depends on what
5 circumstances there are involved. In some of those
6 cases I am sure there were internal union problems.
7 In some of those cases there were actions to quash on
8 the basis of administrative law and not labour law,
9 the decision of an arbitration tribunal. I am sure
10 there are cases in which dissenting groups of unions
11 must have been included in there the case of Raymond &
12 Doherty.

13 MR. STEWART: Well I thought we said
14 that in here. I may be wrong but I thought we said
15 that in here that often there were union against union
16 and therefore the statistics are there but even so
17 most of the cases are in this twentieth century
18 between the employer and the union.

19 MR. POLLOCK: The only case that I
20 you can
21 can recall recently and/correct me if I am wrong in
22 which a union sought an injunction against an employer
23 was the Toronto newspaper strike in which the Toronto
24 Mailers sought an injunction against an employer for
25 breaching a collective agreement.

26 MR. HICKS: Ontario Hydro experienced
27 the same thing and there have been others. They
28 sought an injunction there to restrain the Commission
29 from integrating its pension plan.

30 MR. POLLOCK: I recall that. In the
newspapers strike it was refused. In CUPI it was

1 refused.

2 MR. HICKS: Because it didn't enjoy
3 status.

4 MR. POLLOCK: But in the newspaper
5 strike that wasn't the question. So it is difficult
6 to compare injunction questions with other things.
7 It is like apples and pears.

8 MR. STEWART: But the remedy shouldn't
9 be the grounds on which you show a bias. If there is
10 going to be a bias on the part of the courts surely it
11 would be shown to the institution of trade unions and
12 this is the point here. Not to the remedy being
13 sought be it an injunction or not.

14 MR. POLLOCK: I don't think anybody
15 is suggesting conscious bias perhaps an unconscious
16 bias.

17 MR. HICKS: The flavour of the union
18 material was a conscious attitude on the part of the
19 court of bias.

20 MR. POLLOCK: In the labour relations
21 sphere and the question of property rights versus
22 collective bargaining right or of labour rights.

23 MR. CLAWSON: In the context of
24 injunctions. Read the speeches Mr. Pollock and it
25 has been said that one of the problems of the injunc-
26 tion was the bias of the judges.

27 MR. HICKS: Mr. Archer I believe
28 commented we will have to change our judges. This
29 was in the press some time ago that we will have to
30 educate the judges.

1 MR. POLLOCK: But the bias is
2 alleged to have existed in the injunctions sphere not
3 in contracts, not in administrative law and not in
4 those other areas.

5 THE COMMISSIONER: Well the fact is
6 that most of this talk about courts is due to a mis-
7 conception of what some of the words mean. They
8 thought they had the right to do this in the picket
9 line and, that ⁱⁿ is effectworking a physical obstruction
10 to the plant. One or two of them frankly admitted
11 and he didn't realize perhaps what he was doing but
12 he admitted that that is what they were there for.
13 That is the effect of mass and it can't be distorted
14 into a criticism of courts. Courts are dealing with
15 acts that are outside of legitimacy that is all. I
16 think it is a rather cheap way on which everybody
17 relies so much. But when men's passions are aroused
18 their tongues are set loose.

19 MR. POLLOCK: The other reference
20 is clarification, on page 28. At the top of that
21 page - "the Supreme Court of Canada in Gagnon v. Founda-
22 tion Maritime held recognition picketing in that case
23 unlawful. The Court found the actions of the pickets
24 contravened Section 22 of the New Brunswick Labour
25 Relations Act forbidding strike action until a union
26 was certified under that Act and, hence, constituted
27 unlawful means and the tort of conspiracy". Is that
28 what Section 22 of the New Brunswick act says that you
29 can't strike until you are certified?

30 MR. STEWART: They construed it that

1 way if I recall that decision. As I recall that case
2 I don't believe / ^{the} section of the act explicitly said
3 that you shall not strike before you are certified.

4 THE COMMISSIONER: So they acted on
5 implication of the other section of the act?

6 MR. STEWART: Yes sir.

7 MR. POLLOCK: Would that situation
8 prevail in Ontario?

9 MR. STEWART: I think there have
10 been decisions Mr. Pollock to that effect where there
11 has been recognition of picketing.

12 MR. POLLOCK: But assuming there is
13 no picketing. Can you go on strike if you are not
14 certified here?

15 MR. STEWART: No.

16 THE COMMISSIONER: But supposing
17 you are not recognized nor certified.

18 MR. STEWART: You can't go on
19 strike until you have exhausted the conciliation
20 machinery.

21 MR. POLLOCK: Well that applies
22 to one that has been recognized or certified.
23 Suppose you have a third.

24 MR. HICKS: They can't strike sir.

25 MR. POLLOCK: So that a group of
26 people working in a plant who aren't certified and
27 aren't organized and they say we are tired of these
28 working conditions, we're going to go home.

29 MR. HICKS: They are acting in
30 concert and the concert constitutes a strike then it

1 is unlawful.

2 THE COMMISSIONER: What section is
3 that?

4 MR. HICKS: It's section 54
5 specifically.

6 THE COMMISSIONER: But it isn't
7 specifically a group who have formed themselves into
8 a union.

9 MR. HICKS: If they act in concert
10 together and simply quit.

11 THE COMMISSIONER: But the other
12 sections deal with only two kinds of proof.

13 MR. HICKS: Under Section 54 (2).

14 MR. POLLOCK: Where no collective
15 agreement is in operation no employee shall strike
16 and no employer shall lock out an employee until the
17 Minister has appointed a conciliation officer or a
18 mediator under this act and/really-in effect/prohibits
19 a strike in those circumstances because there isn't
20 any machinery for the Minister of Labour to appoint a
21 conciliation officer.

22 MR. HICKS: That is right and that
23 is why I say it is largely by implication you
24 have to look at the whole statute.

25 MR. STEWART: By consequence but you
26 were questioning Mr. Pollock about the Gagnon case.
27 If I recall correctly in that case there was no
28 strike. This was the point, in that situation there
29 was picketing conducted by agitators or union
30 officials who wanted to get recognition rights there

1 and the court found that there were more peaceful
2 means. That is how I interpret it.

3 MR. POLLOCK: Well it is short-
4 circuiting that type of thing. Interestingly enough
5 you carry on in the same column and talk about Acton
6 Excavating. The court forbidding recognition picket-
7 ing. I think in Acton Excavating a group of
8 independent dump truck operators had applied to the
9 labour relations board and had been told you are not
10 employees under the Labour Relations Act and therefore
11 you can't be certified. Then they went out to try and
12 organize on the basis of the common law right of
13 withdrawal of labour and it was admitted at the hearing
14 of the injunction that they were not employees under
15 the Labour Relations Act so that in effect they weren't
16 short-circuiting at all because they had already been
17 told that they didn't come ^{under} it. So perhaps that is
18 another hiatus case.

19 MR. STEWART: It could well be.

20 MR. POLLOCK: On page 29 when you
21 are talking about the injunction procedure and you
22 say that after the commencement of an action for
23 damages and injunctive relief the plaintiff is at
24 liberty to apply and I'm paraphrasing here before
25 the application may be heard and subject to the right
26 to proceed ex parte a plaintiff employee must give
27 two days' notice of his application to the pickets
28 whom he wishes to restrain. In fact and in practice
29 he wishes to restrain more than just the pickets,
30 all people who have knowledge of the order are

1 restrained. Now the concern is in some quarters
2 that all these people who are restrained and have
3 their actions limited haven't had an opportunity of
4 any sort to make representations as to their denial
5 of communicative freedoms or assembly freedoms or
6 any of these factors. They aren't parties to the
7 action and they can't appeal even if they could
8 establish the intricate prerequisites to appeal of
9 an interlocutory procedure.

10 MR. STEWART: There's no doubt
11 here that we are dealing with a double fiction.
12 The first fiction the original fiction was the fact
13 that the union is not an entity. If the union was
14 a party to the action then the criticism made would
15 disappear. Now since we have to have a party to the
16 action we choose discriminately, we choose at random
17 six individuals who are usually the main participants
18 in the picketing and to that extent they were quite
19 correct in saying that other parties and other
20 members of the union or other pickets are not
21 represented in court but I don't think that this in
22 fact brings any act of harm. The counsel represent-
23 ing these pickets usually by chance happens to be the
24 counsel who acts for the union too so the union is
25 recognized and is represented in court.

26 MR. POLLOCK: The point becomes
27 relevant when other people in the community who are
28 not members of the union and who are not these named
29 pickets seek to attend at the premises in a demonstra-
30 tion as was the case in the Tilco Plastics.

1 MR. STEWART: Why were they there?

2 MR. HICKS: What is their purpose?

3 MR. POLLOCK: Their purpose is to
4 assemble, to demonstrate I suppose, now let me finish
5 my answer first. To demonstrate their position in
6 relation to injunctions in the province of Ontario.

7 MR. HICKS: To support the picketers.

8 MR. POLLOCK: It may not have been
9 particular support to the picketers. You are speaking
10 from a particular fact situation and I am asking you
11 about those people who have no relationship at all
12 with the picketers except that they are members of
13 unions and have a feeling that injunctions ought not
14 to be granted.

15 MR. STEWART: I think what you are
16 saying is that there may be a theoretical truth in
17 what you are saying but really let us look at the
18 degree to which we have limited their right of
19 expression. We have limited it only geographically.
20 We have in no way restricted them. Now let us deal
21 with Peterborough. Nothing stopped those people in
22 Peterborough / hiring the biggest stadium or arena
23 they had in Peterborough and carrying on in whatever
24 fashion they wanted within the limits of decency etc.
25 and showing that they did not like the injunction but
26 they sought to do it in a way which in fact breached
27 the order of the court which was to attend at the
28 premises.

29 MR. POLLOCK: What if they had
30 marched up and down on the road and they didn't have

1 signs that said we support the Tilco pickets. Assum-
2 ing they didn't have these signs that animated the
3 struggle, they still have not had an opportunity to
4 argue their case for freedom of expression.

5 MR. STEWART: Their complaint was
6 political not economical and there was therefore no
7 reason for them to be right at the source of the
8 economic dispute which was the strike between Tilco
9 Plastics and its strikers.

10 MR. CLAWSON: You would have a great
11 deal of difficulty with them under a system where you
12 didn't permit the hiring of new people and barred
13 pickets from picketing completely by employees. You
14 would have the same problem with political protestors.

15 MR. POLLOCK: Well you have political
16 protestors that would protest presumably at a site or
17 focus of the problem. Now if you're picketing about
18 the war in Viet Nam you picket down in front of the
19 American Embassy, the Consulate, if you are picketing
20 against injunction laws you picket at the site of an
21 injunction.

22 THE COMMISSIONER: What is the
23 purpose of this?

24 MR. POLLOCK: I want to know all the
25 answer to the question that is raised by the labour
26 movement in saying that there are people that have
27 not had an opportunity to appear and have no opportunity
28 to appeal and they've had their rights restricted.
29 That is their communicative freedom and liberties and
30 your answer is that they can do it somewhere else and

1 that they are only slightly effected.

2 MR. HICKS: Yes.

3 THE COMMISSIONER: They have a
4 perfect right to have signs which relates to them.
5 If they make the application in court and say that I
6 am free of this taint.

7 MR. POLLOCK: On page 30 you raise
8 the Oshawa strike and the only question I ask is what
9 finally happened to those proceedings? There was I
10 think some kind of proceedings commenced.

11 MR. HICKS: Mr. Pollock I thought you
12 were there.

13 MR. POLLOCK: I was only there for
14 the first time and I don't know what happened to it
15 afterwards.

16 MR. HICKS: I'm sorry I thought you
17 were there on the withdrawal.

18 MR. POLLOCK: No the matter was
19 settled between the parties.

20 MR. POLLOCK: On the question of
21 vicarious responsibility on page 31

22 MR. STEWART: I found last night
23 that we had a / typographical error in the second last line. The
24 word should read "to disassociate the union from the
25 unauthorized action," rather than "authorized".

26 MR. POLLOCK: Now with regard to
27 vicarious responsibility how can you bring home the
28 liability to a union for any actions of the member-
29 ship, or would you look at it negatively and say
30 unless you disassociate yourself or disassociate the

1 union from these activities then you are going to be
2 liable. If that is the case then it doesn't or you
3 don't have to have an overactive imagination to
4 contemplate that that is the common resort that is
5 going to be made "please don't strike go back to work".

6 MR. HICKS: That is the problem
7 exactly and this happens.

8 MR. POLLOCK: Is there any guide line
9 further than that? I suppose disciplining the
10 defaulting member might be evidence of good faith.

11 MR. HICKS: It is within their
12 province now to do so but we never hear of it. It is
13 available to them however.

14 MR. HENLEY: They must also take
15 the steps management has to take undertaking sincere
16 and meaningful instruction in education for their
17 officials.

18 MR. POLLOCK: We've exhausted many
19 of our questions with regard to part 5. I think before
20 we go on to part 6 we'll adjourn until tomorrow morn-
21 ing at 10:00 o'clock.

22 ---Adjournment.
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BINDING SECT. OCT 20 1967

